



## TABLE OF CONTENTS

3	Opening statement by Mr. Lukas.....	3	
	Opening statement by Mr. Mayer Morganroth.....	41	
4	<b>WITNESSES FOR THE PLAINTIFFS:</b>		
5	<b>Witness</b>	<b>Page</b>	
	<b>LINDSEY TITTENSOR</b>		
6	Direct Examination by Mr. Nichols.....	56	
	Cross-Examination by Mr. Mayer Morganroth.....	96	
7			
8			
9	<b>EXHIBITS RECEIVED:</b>	<b>Page</b>	
10	Exhibit P21	Quicken sales process....	63
	Exhibit D2	Compensation plan.....	101
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25	<b>CERTIFICATE OF COURT REPORTER.....</b>	121	

1      Detroit, Michigan

2 February 8, 2011

3 || At 9:00 a.m.

(Beginning of excerpt at 2:15 p.m.)

## OPENING STATEMENT

6 MR. LUKAS: Thank you, Your Honor. Counsel, good  
7 afternoon. Ladies and gentlemen, good afternoon. I have  
8 some technology here, which can be dangerous. So,  
9 hopefully I will fumble through without pressing the wrong  
10 buttons, or something like that.

11 My name is Paul Lukas. I'm one of the lawyers  
12 that represents the loan consultants in this case, or the  
13 former loan consultants at Quicken, or the plaintiffs you  
14 will hear them referred to. My partners are Don Nichols,  
15 Robert Schug and Rachhana Srey. Those are the four lawyers  
16 that will be taking the podium up at different times. Some  
17 of our clients are back there. I may introduce some of  
18 them in a little bit.

19                   Ladies and gentlemen, this is a case about sales.  
20                   It's about a company trying to avoid the federal overtime  
21                   law by claiming that their sales force's primary duty is  
22                   not selling loans. The company is Quicken Loans, one of  
23                   the largest sellers of loans in the country. And under  
24                   federal law, employers in the finance industry have to pay  
25                   overtime to their salespeople who work more than 40 hours.

1      The 300-plus plaintiffs in this case work for Quicken in  
2      this type of sales job. They were called loan consultants,  
3      sometimes they were called loan officers, sometimes they  
4      were called web bankers. They worked during different time  
5      periods in the time frame that matters in this case, May  
6      2002 to September 2006. And they were not paid overtime,  
7      despite working a lot of it.

8              Now, Quicken will try to win this case by  
9      claiming that these employees' job duty was not sales. But  
10     the evidence will show that their job was sales. In fact,  
11     the company-stated goal for these employees was to be  
12     called, quote, the best sales force in the country,  
13     unquote. But even though loan consultants were  
14     salespeople, Quicken did not pay them overtime and they  
15     violated federal law.

16              Now, the overtime law says employers must pay  
17     overtime to employees who work over 40 hours a week. There  
18     are exceptions to that general rule. They are called  
19     exemptions. And in this case Quicken claims they didn't  
20     have to pay these loan consultants overtime because of  
21     something called the administrative exemption. You will  
22     hear the law from the Judge. And I'm going to do my best  
23     to summarize it, but what the Judge tells you is right.  
24     But the administrative exemption only applies when the  
25     employee's primary duty is office work directly related to

1 management or general business operations and the exercise,  
2 discretion and independent judgment with respect to matters  
3 of significance or generally when the employees provide  
4 financial advice, consulting or financial analyst services  
5 for the benefit of the customer. That's a mouthful but  
6 more simply, and most simply, the administrative exemption  
7 does not apply -- flat out does not apply in the financial  
8 industry when the employee's primary duty is sales. And  
9 that's why this case is all about sales. This is true even  
10 if they were paid salary, or commission or hourly under,  
11 what you'll hear of the law, financial services employee  
12 whose primary duty is sales get overtime.

13 In other words, if the loan consultants' primary  
14 duty in this case was sales, Quicken has to pay overtime,  
15 and that's it.

16 Now, when an employer claims an exemption under  
17 the overtime laws, they have the duty to prove it.  
18 Plaintiffs do not have to have some kind of burden or know  
19 that the law was being violated while they were working  
20 there. Quicken has to show that the loan consultants'  
21 primary job in this case was not sales

22 Now, for the reasons I will share with you now,  
23 defendant will be unable to prove this. Instead, the  
24 evidence will show that the loan consultants' primary duty  
25 was very obviously sales. And that was a very demanding

1       sales job that took between 60 and 70 hours a week on  
2       average to perform.

3               But first, let me tell you a little bit about  
4       Quicken Loans. Quicken is run by some really smart  
5       salespeople. Dan Gilbert is the principal owner and an  
6       excellent businessman. He is a lawyer and a very smart  
7       salesperson. You may know him as a high-profile Detroit  
8       resident or the owner of the Cleveland Cavaliers. I  
9       believe he is sitting back in the corner over here.

10               Now, Mr. Gilbert and his group took advantage of  
11       advances in the internet, smartly coupled them with  
12       extremely effective sales technique that I'll explain to  
13       you, and a very sophisticated technology system. And as  
14       they describe it, became the number one online lender in  
15       America.

16               Now, they became the number one online lender in  
17       the country by abandoning the traditional face-to-face  
18       lending procedure and replacing it with selling loans from  
19       massive call centers, and with loan consultants sitting in  
20       endless rows of cubicles wearing headsets, pounding the  
21       phones, calling sales leads over and over, and using very  
22       successful high-pressured sales techniques to convince  
23       customers to buy a Quicken loan.

24               Quicken used its sophisticated and automated  
25       computer systems in pricing, that quickly figured out for

1      the customer whether they qualified for a Quicken loan and  
2      what the terms and price for that loan would be, even  
3      within minutes. It was pretty impressive. It is pretty  
4      impressive. They put together a marketing promotion and  
5      public relations team that established the company name,  
6      got the phone to ring and gathered hundreds of thousands of  
7      leads for the sales force to call. So you will learn that  
8      not only was the primary duty of Quicken's loan consultants  
9      sales, but that Quicken grew to be the number one online  
10     lender in America precisely because these loan consultants  
11     were the sales force behind the successful loan-selling  
12     machine.

13              The loan consultant job was a high-pressure,  
14              high-stress, high-turnover sales job. The fact that it was  
15              a sales job was never in question. Loan consultants were  
16              hired and trained, motivated and monitored and judged and  
17              paid as salespeople. The best evidence of the fact that it  
18              was a sales job comes right from Quicken's mouth. Everyone  
19              there called the loan consultant Quicken's sales force. It  
20              was Mr. Gilbert who stated that the company goal was to be  
21              the best sales force in the country and said, quote, how do  
22              we get there? By the success of one loan officer at a  
23              time. In other words, they were going to become the best  
24              sales force in the country because of the work of a group  
25              of people that they are now saying primary duty wasn't

2/8/11

8

1 sales.

2 Jay Farner, that's a name you will hear, if you  
3 haven't heard it on radio. Mr. Farner is the manager in  
4 charge of these loan consultants. He's in charge of the  
5 call centers. His title was vice president of sales. He  
6 was in charge of the web sales center. His direct reports  
7 were sales directors. He very clearly told the loan  
8 consultants what their job was.

9 Here I go with the technology. Here we go.

10 "We are not order takers. We are sales  
11 professionals. Let's sell hard today. Everybody writes  
12 two. Jay."

13 He also tells them what their job is all about.  
14 It's all about selling. Here's another one. We sell,  
15 let's get excited about it, exclamation point. You will  
16 see a lot of exclamation points, you'll see a lot of all  
17 caps in e-mails at Quicken.

18 Mr. Farner's sales directors parroted this  
19 message daily. Here is one from Jeff Perry.

20 "Do not just crumble when you get an objection.  
21 Rates are moving up. Close at least three times. If you  
22 burn it, big deal. You can always call back."

23 "Burn it" means making the person angry and they  
24 hang up on you.

25 "The bankers that get aggressive will win. As a

1       salesperson our job is to sell. Today we have to sell  
2       hard."

3                   There is all kinds of e-mails everywhere when no  
4       one was looking. Up until 2004, when we sued out this  
5       case, everything at Quicken called these people  
6       salespeople. But after our lawsuit, Quicken mysteriously  
7       removed the word "sell" and "sale" from many of their  
8       corporate documents. The job didn't change, only the  
9       language in Quicken's corporate documents.

10                  Here's an example. The sales center loan  
11       consultant compensation plan, that's our folks, the  
12       plaintiffs here, that became web center loan consultant  
13       compensation plan. New hires, who had previously received  
14       initial sales training when they were hired, got the exact  
15       same training, but it was suddenly called mortgage banking  
16       training program. Loan consultants hired before the  
17       lawsuit received a letter that said, congratulations --  
18       oops, there I go.

19                  Congratulations, you are joining one of the  
20       mostly highly trained and skilled sales forces in the  
21       United States of America, the Quicken Loans sales web  
22       center.

23                  After the lawsuit, new hires were told,  
24       congratulations, you are joining one of the most highly  
25       trained and skilled web loan banking teams in the United

1           States of America, Quicken Loans web center.

2           Also, after the lawsuit, Quicken drafted an  
3           8-page single-spaced tiny-font job description.

4           Conspicuously, absent as you'll see from this 8-pager,  
5           maybe it's 7 pages, is the word "sell" or "sale" anywhere  
6           in it, describing the loan consultant's job duties.

7           So, before this lawsuit, loan consultants were  
8           identified for what they were, salespeople. And the  
9           evidence will show that their job did not change after this  
10           lawsuit in 2004. Their job was sales before and after this  
11           lawsuit was filed. From May of 2002, which is the start  
12           date that you are going to care about, all the way through  
13           when our lawsuit was filed in '04 to September of '06,  
14           their job was the same, sales. Their job was the same  
15           because they were still hired and trained, motivated and  
16           monitored and judged and paid as salespeople.

17           I'm going to tell you what the evidence will show  
18           on each of the those categories, starting with hiring.

19           Hiring: Sales experience was the main criteria for  
20           hiring loan consultants. No finance, mortgage or loan  
21           experience was required. Employees were recruited and  
22           hired based on sales experience. The job interviews were  
23           all about sales. Quicken told loan consultant candidates  
24           that it was a sales job and all they needed was a desire to  
25           sell. They were told Quicken would teach them a successful

1      method for selling these loans and that they would develop  
2      the skills and experience necessary to do it more and more  
3      efficiently, which is really true. They taught them to how  
4      sell, and they did a great job of teaching them how to  
5      sell. They told them, don't worry about your lack of  
6      finance and mortgage finance experience. We will teach you  
7      how to sell this stuff.

8              Again, the hiring letter before the lawsuit said  
9      it all. In addition to welcoming them to the most highly  
10     trained and skilled sales force in the United States of  
11     America, the hire letter said, as sales professionals, you  
12     will need to work the phones hard. In order to be  
13     successful, we have found you will need to make a minimum  
14     of 80 outbound calls per day and spend a minimum of 5 hours  
15     on the phone selling to clients per day. Hiring, because  
16     of sales. Again, in the hiring documents, showing it's  
17     sales.

18              After hire, Quicken trained the loan consultants  
19     to sell. All new loan consultants were required to attend  
20     a four-week training program that used to be called initial  
21     sales training. The first couple weeks they taught them  
22     the basics about mortgages and Quicken Loans, in  
23     particular, so they'd know what were selling and the weeks  
24     after that was all about how to sell them. The loan  
25     consultants were taught they need to A, B, C, Always Be

1      Closing.

2              You will hear the term "closing" in this case in  
3 connection with the loan consultants. I don't want you to  
4 be confused because you figure, well, it's a case about a  
5 loan company, closing must mean when the customer closes on  
6 the loan, gets their property or money. No, that's not  
7 what closing usually means when they are talking to loan  
8 consultants. When they're talking to loan consultants,  
9 closing means to ask the customer for a \$500 deposit.  
10 That's what closing means. When you hear, did you close on  
11 the customer, that means did you ask him for the 500 bucks.  
12 You will learn that this \$500 is very important. Quicken  
13 Loans teaches the loan consultants that once the customer  
14 plops down that \$500, the sale is very likely to actually  
15 happen.

16              In fact, the loan consultant could not even put  
17 in a loan application for the customer until or unless they  
18 got the \$500 in the system by credit card number or check  
19 routing number.

20              Also, in training, more sales stuff, in training  
21 they are played clips from modern classic sales movies,  
22 like Boiler Room, Glengarry Glen Ross. They are given the  
23 book The Sales Bible to read, and they are taught that  
24 pounding the phones and selling is what will make them  
25 successful. They spend a lot of time role-playing sales

1       calls and near the end of their training, they may take  
2       live calls, or make live calls from the sales floor as part  
3       of their training.

4               You will learn that loan consultants were not  
5       trained to provide financial advice. They were not trained  
6       to provide financial counseling and they were not trained  
7       to do a financial analysis. Rather, they were trained to  
8       call individual customers directly and obtain information  
9       necessary to determine if that person qualified for a  
10      Quicken loan. If they did, no option. Sell.

11               They taught them how to do that, get that \$500  
12      and sell that loan. Now, if the customer qualifies a loan  
13      under Quicken's guideline, that's the end of the analysis.  
14      If it made sense for Quicken, the loan consultants were  
15      taught to sell. That makes sense. That's sales.

16               So within a few short weeks of training, they  
17      knew exactly what they needed to know about Quicken's loans  
18      to sell them. They had their headsets strapped on sitting  
19      in their cube in the call center trying to sell loans.

20               Now, the centerpiece of this training is  
21      something called the sales process. This is Exhibit 21,  
22      you will be seeing this. This is the heart and soul of the  
23      Quicken training program. This is the heart and soul of  
24      the loan consultant job. It's literally called the refi  
25      sales process.

1                   Learning and effectively using this sales process  
2 is the key to becoming a successful loan consultant. It's  
3 a ten-step sales script that the loan consultants are  
4 required to follow. It's a creation of the Quicken sales  
5 training team, their managers, executives. It represents  
6 the collective knowledge of these very talented  
7 salespeople. It is incredibly successful, or was  
8 incredibly successful. And you will get an insider view of  
9 how this thing works and you will likely understand why it  
10 was successful.

11                  It's designed to be executed over two calls. The  
12 yellow side is the first call and the green side is the  
13 second call. Now, the first call, the loan consultant is  
14 taught step one is foreshadowing, gain control. They teach  
15 a lot about gaining control of the phone call. Like a good  
16 salesperson, don't lose control of the call. That's where  
17 we start with step one.

18                  Then they have step two. And step four, they  
19 have to get certain information necessary to see if the  
20 person qualifies for a Quicken loan, and they fill those  
21 out. While they are doing that, they are trained to  
22 perform some very specific and effective sales techniques.

23                  Examples of those will be explained to you  
24 through the witnesses as we go. I don't want to spend too  
25 much time on all of them. I'll give you a couple examples.

1      One is called foreshadowing, the \$500. That means -- I  
2      think it's up to four times, or three times, before they  
3      actually ask for the 500 bucks in call two, they  
4      foreshadow. They basically say -- they have ways of  
5      bringing up and then backing off, not really asking for it.  
6      So that the customer gets comfortable with it, so that when  
7      they go for the close and get that \$500, it's been  
8      foreshadowed. That's just a good sales technique.  
9      Foreshadowing is one.

10           Building rapport, which is right, actually,  
11      literally, on the process. Creating the need. Here's a  
12      section called create need. And find the emotional hook,  
13      that's a big one. Find out what the person needs the money  
14      for because that's how you sell these loans. Because later  
15      on, in call two, they tell you to tie in emotionally, find  
16      out what you found out about why they needed the money.  
17      They want to send their kid to college and when they're  
18      coming for the close, well, don't you want your kid to go  
19      to college, that kind of thing. That's call one.

20           The second call includes five more steps.  
21      Actually the first call, I should tell you, ends with them  
22      getting the Social Security number. If they're successful  
23      in the first call, it ends with getting the Social Security  
24      number.

25           The second call has five more steps, and if

1       that's successful, they get the \$500. They close and get  
2       the \$500. That's the green side. Getting the money is the  
3       green side of the sales process.

4               Now, between the first call and the second call,  
5       the loan consultant prepares a sales pitch by pulling the  
6       customer's credit, figuring out what loan the customer  
7       qualifies for and figuring out which loan is the easiest to  
8       sell. Newer loan consultants often need their manager's  
9       help with this but through experience, most loan  
10      consultants can do it under ten minutes.

11               In fact, when things are going really well, some  
12      of the most skilled and experienced loan consultants could  
13      do it in one call. They could run credit, piece together a  
14      loan, do what they are supposed to do on call two or on the  
15      second side, and just keep going. It can go all the way  
16      through the two-call process in one step. Now, that is  
17      considered exceptional selling at Quicken. But in most  
18      cases, it happened between the first and second call where  
19      they get the Social Security number, they run credit and  
20      then the start of the second call -- this one is an example  
21      of the refi sales process.

22               They have another one for mortgages. And here's  
23      what it says. Prep before the call. Look at credit,  
24      calculate and fill in all blanks in step six. This is step  
25      six. Determine how you will start the call and rehearse

1 call before calling client. So they get the Social  
2 Security number. They get what they need. They have all  
3 the income and property information. They fill out this  
4 form here and then they rehearse their second call and then  
5 they make their second call.

6 Now, the most important -- there is a number of  
7 sales techniques on this side, too, but the most important  
8 one by far is called ARClng to overcome objections. ARClng  
9 is A-R-C, and you will see it on here. ARC, it means,  
10 Acknowledge, Respond and Close. Acknowledge means, yes, I  
11 understand what you are -- an objection, by the way, I  
12 should probably tell you for loan consultants in their  
13 world -- Quicken calls an objection any time a customer  
14 hesitates or raises a concern about giving up that \$500.  
15 That's called an objection.

16 When an objection happens, they are supposed to  
17 ARC. ARC means acknowledge it, respond and close. I  
18 understand, I understand your concern. A lot of my  
19 customers have that concern. That's A.

20 R is to respond to the concern. And they are  
21 trained. There is a training manual, pages and pages of  
22 canned responses to give to the most difficult objections.

23 And then close. And that's how it works.  
24 Acknowledge, respond and close.

25 For example -- I will give you an example of one.

1      If the loan consultant is trying to sell a loan without a  
2      fixed-rate interest rate, like an interest-only loan. Or  
3      an adjustable-rate mortgage. And the customer says, I want  
4      a fixed-rate mortgage, the loan consultant is trained to  
5      say, for example, I could do a fixed-rate mortgage but I'm  
6      not comfortable putting my -- most of my clients in that  
7      program. I will do it if you insist but I don't feel like  
8      I'm doing my job to the best of my ability if I don't  
9      explain the fantastic advantage program we have. In fact,  
10     it is the same program I put my parents and sisters in.  
11     That's a response. This comes from a training manual that  
12     you will see that has pages and pages. This is response  
13     number 36.

14           So, once they have acknowledged, once they have  
15     responded, then they close. These use one of these five.  
16     These are five examples that are in the training.

17           As you will see, for example, the top one, bottom  
18     line is that we both know this makes sense. So let's get  
19     the ball rolling and get this loan in process. What credit  
20     card do you want to put your deposit on, Visa or  
21     MasterCard? And you will see the other ones are just sort  
22     of variations on that theme, usually ending in Visa or  
23     MasterCard. That is ARCing.

24           This sales process says that a loan consultant is  
25     supposed to ARC five times before giving up. Actually,

1       they are told not to give up. They are told to do  
2       something called a trial close, which is, okay, try again  
3       later. Try five times and if you still can't close, you  
4       still can't get the \$500, then you set up another  
5       appointment or phone call, a very specific date and time to  
6       call back, rearm and try again.

7           So if successful on the green side, the customer  
8       gives the \$500 deposit. The loan consultant takes an  
9       application, enters it into their computer system and it  
10      becomes a part of the loan consultant's pipeline. But  
11      that's not the end of the sale. The loan consultant has to  
12      send the documents, the sale documents, for the customer to  
13      sign and return. This is called the book. You will hear  
14      it be recalled to as the folder, and it's all the documents  
15      you need to sign in order to get a loan.

16           And that book or folder is sent off to the  
17       customer by the loan consultants. And then the loan  
18       consultants have to manage their pipeline, which  
19       means -- you'll hear that, manage your pipeline. That  
20       means, find where your loans are in the process. And if  
21       you need to do anything to make sure that that thing is  
22       moving along and the sale is going to happen, so that you  
23       get paid your commission.

24           Now, when all of documents are returned, the loan  
25       consultant sends it off and it goes to their processing,

1       underwriting and closing departments. So that's pretty  
2       much it. Unless a problem arises, it comes back and the  
3       loan consultant may have to get more information, or  
4       something, from the customer, or maybe even have to resell  
5       a different loan if underwriting didn't like the first one.

6                   So, the sales process -- this is the sales  
7       process. It's not a mere suggestion, by the way. It is  
8       mandatory. It must be used every time at the risk of being  
9       fired if these loan consultants didn't use it.

10                  They say, use your own personality, inject your  
11       own personality, and all that, but follow this process. It  
12       works. No sense reinventing the wheel.

13                  Here is what Jay Farner tells the loan  
14       consultants about this sales process. Block out everything  
15       going on around you and concentrate on only one thing. The  
16       sales process. Forget when lunch is, forget that your  
17       buddy wants to take a smoke in ten minutes, forget that the  
18       client is giving you bogus objections, one simple message,  
19       follow the sales process. Challenge yourself between the  
20       calls coming in and leads you follow up on, follow the  
21       sales process on every call. Not 99 percent, every call.  
22       So, it is not surprising that the bread and butter of this  
23       sales job is entitled the Sales Process. You will hear  
24       more about it.

25                  So that's hired and trained, as salespeople. How

1       about motivated and monitored? Let's talk about those two  
2       things. Once the trainee hits the sales floor and they are  
3       an actual loan consultant, the loan consultants find  
4       themselves in a very high-pressure sales environment.  
5       Their cubicles are in this call center. Some of the  
6       witnesses will describe it as a frat house atmosphere. The  
7       loan consultants are divided into teams with catchy names,  
8       like The Vault, Brass Nuckolls, The Bottom Line, The  
9       Rockefellers and The Money Train. The mega-caffinated  
10      beverage Red Bull is distributed for free. Balls are being  
11      thrown around, gongs, sirens, sounds to celebrate or  
12      signify a sale made by one of the other teams. And there's  
13      all kinds of rowdy, motivational sales behavior going on in  
14      addition to that

15            Give you an example. Here's one sales director  
16      telling his team, at the beginning of the second call  
17      block -- I will explain to you what call blocks are -- I  
18      want everyone to get off the phones, stand up, clap  
19      repeatedly 20 times and say, yes, when Mark Mazey pulls his  
20      hand down. This will be our daily signal to get to work.  
21      This is the kind of environment it was. It was so loud on  
22      some occasions, and there is so much horsing around, that  
23      loan consultants were trained to make up an excuse when  
24      they are on the phone and one of these things happened.  
25      They were told to say things like, oh, everyone is really

1           excited here because the rates just went down.

2           So loan consultants were expected to make 80  
3           dials a day to sales leads. Although these people were  
4           supposed to be what they called warm leads, many of the  
5           people the loan consultants called never heard of Quicken  
6           or they weren't interested in a loan or they were sick of  
7           getting called just because they put their information in a  
8           website like LowerMyBills.com or lendingtree.com. So it  
9           was often difficult to get these people on the phone, and  
10           when they got them on the phone, it was really hard to keep  
11           them there. It was a tough sales job, it really was.

12           All leads were to be called at least four times.  
13           Quicken, like I said, their marketing and promotions  
14           departments did a great job of generating leads. So they  
15           had a lot of leads and they would say, pound the phones.  
16           All leads were to be called at least four times, although  
17           Quicken encouraged the loan consultants to far exceed that  
18           minimum.

19           For example, Mr. Gilbert, and that senior vice  
20           president of sales, Jay Farner, called one loan consultant  
21           a true champion and a great example of persistence and  
22           success when he called one potential customer 24 times in 7  
23           days. Over and over again, we see this from Dakota, this  
24           guy is a true champion. That's what made a good loan  
25           consultant. And again, I'm not saying it's bad. It's just

1 sales. It's nothing else.

2 Those who were not this persistent were asked,  
3 why not? The loan consultants will testify and the  
4 evidence will show that all of their duties was sales. In  
5 addition to being on the phone between 15 and 20 hours a  
6 week, loan consultants were expected to communicate with  
7 current and potential customers by e-mail, keep track of  
8 and organize their list of leads and make notes of any  
9 contacts or attempted contacts they had, like Mr. Dakota  
10 did. I don't know his last name. Behind that is a list of  
11 all the 24 times he tried to call.

12 They're reading and answering e-mails and  
13 returning voice mails from the managers and potential and  
14 current customers. They enter sold loans into -- by the  
15 way, returning voice mails and e-mails from customers was a  
16 really big deal because Quicken made a very big deal about  
17 customer service. They had, like, a rule. I don't know,  
18 if it was a 24-hour rule, something like that, where  
19 everyone gets called back. And loan consultants were very  
20 jumpy because if you didn't call somebody back and they  
21 called and complained that you didn't call somebody back,  
22 you would get an e-mail from Dan Gilbert himself during  
23 this time period, in this 2002 to 2006 time period.

24 They would have to follow up and gather documents  
25 from customers they'd already sold loans to. They would

1 have to track the pipelines of sold loans and obtain any  
2 additional information, if necessary. They had to attend  
3 daily team sales meetings, sometimes multiple team sales  
4 meetings. These teams would get together and rah, rah,  
5 multiple times during the day to keep these guys motivated,  
6 because it was a -- really could be a mind-numbing job at  
7 times with the dialing and dialing and dialing and managing  
8 the pipeline and navigating through the systems.

9 So these people were either preparing to sell,  
10 selling, following up on a sale or training or meeting on  
11 sales. Not only was their primary duty sales, it was their  
12 only duty. But truthfully, the most stressful part of this  
13 job was the e-mails and the voice mails and the other  
14 conduct by the managers pushing for more sales and  
15 constantly monitoring their sales progress. You will see  
16 and hear many examples of the pressure to sell, and these  
17 are just a handful of e-mails but you will see it all over  
18 the place.

19 Here is one from Jay Farner, the big boss:  
20 Congrats to the 122 bankers who have contributed today.  
21 It's 3:30 in the afternoon and that means 122 loan  
22 consultants had sold something at that point. Everybody  
23 else ask yourself a question. When was the last time you  
24 sold a deal? 15 minutes ago? An hour ago? 3 hours ago?  
25 There are 1,000 reasons why you might be doing something

1       else right now besides selling. Are they really that  
2       important? No one can do a loan with us unless we call.  
3       When the rates are 6 percent or they have decided to go  
4       with someone else, it's too late. This is a sales job.

5               Here's one from a sales director: We need to crank  
6       up the intensity -- the sales intensity tomorrow. We have  
7       an additional 60 bankers on the floor and production is  
8       flat. We also have a program with a start rate of 1.99  
9       percent.

10               Another loan sales director, telling his team:  
11       Leads are out of control, sell with passion and enthusiasm,  
12       the products are there, make the clients love you. Someone  
13       sell. I hear Mojica selling is off. Anyone else out  
14       there?

15               Like I said, we don't really need to blow up many  
16       of these e-mails. There is a lot of all caps and a lot of  
17       exclamation points. And they're making their point. Their  
18       point is, this job is to sell.

19               We are still in panic mode. Just stay calm.  
20       Don't leave your chair or phone unless you have to go to  
21       the bathroom. Dial and sell and we will finish strong.  
22       It's still early. It's like 4:30 in the afternoon. It's  
23       still early.

24               Quicken used the team concept to apply peer  
25       pressure on their loan consultants. Sales contests within

1       the teams, sales contests between the teams, and this is  
2       the kind of thing this generated.

3                 Look at the board above McLean and you will see  
4       The Firm -- that's one of the sales teams -- is getting  
5       their... kicked by the Goodfellows, another sales team.  
6       Anyone going to step up or are we just going to give in?

7                 Here is another one from the same manager, his name  
8       is Jeff Perry. Eighth place is pretty hard for me to  
9       swallow, guys, considering we have been number one for the  
10       last two years. Make a choice to step it up today. Team  
11       Noja has a hundred books back for the month and we have  
12       116. Something doesn't seem right with that. Let's go,  
13       let's go, let's go, let's go, let's go.

14                 And it worked. The loan consultants will testify  
15       that their team members actually would get mad at them if  
16       they went to lunch or if they left before anybody else. So  
17       it was highly effective. Individuals and their teams were  
18       constantly told where they were in meeting their sales  
19       quotas, and where they ranked both on their team and call  
20       center-wide. Each loan consultant's sales numbers were  
21       written on a board. I think you saw that in one of the  
22       e-mails. Every team had a big board right outside where  
23       everyone on the team could see it and everyone in the call  
24       center could see it, where they kind of put a -- when they  
25       sold a deal, they got 500 bucks. They'd go out and slap a

1 mark by their name.

2 If they were behind their sales quotas, they were  
3 constantly reminded about it and hounded. If they were  
4 ahead, they were told to keep selling and to help the team.  
5 If they didn't sell enough loans, they were given a written  
6 warning with specific sales quotas to meet. If they didn't  
7 meet the sales quotas that were in the written warnings,  
8 they were fired.

9 Daily call blocks, which you saw referenced in one  
10 of the e-mails, were randomly scheduled during the loan  
11 consultants' day. Suddenly, one of the managers would  
12 announce call block from X time to X time, usually, like, a  
13 two-hour time period. All loan consultants were required  
14 to drop whatever they were working on, whatever they were  
15 doing, and just get on the phone and make new calls, new  
16 calls, new calls, and pound the phones using this sales  
17 process. No other sales duties allowed, the phone only.  
18 That's what a call block was.

19 The sales contest prizes, free pizza, sales  
20 meetings and other motivational events were also never  
21 ending. It was always sell, sell, sell. And loan  
22 consultants worked crazy hours to meet these expectations.

23 To make it more stressful, Quicken monitored the  
24 loan consultants' every move. Managers responsible for  
25 each team paced up and down the aisles and listened to them

1 talk on the phone. They walked right up and had the  
2 ability to plug into their phone and listen right on the  
3 spot, and gave advice on how to bag the deal while it was  
4 happening. In other words, while the loan consultant was  
5 talking to the customer, they'd plug in where only the loan  
6 consultant could hear, and say, you know, ARC, ARC, or  
7 pivot, or find the emotional hook, whatever else they  
8 thought would make the sale on the spot.

9                   Loan consultants' calls were also recorded and  
10 they would be called into something called the listening  
11 room, and then the sales manager in charge of them and  
12 sometimes training managers would sit with them and  
13 critique them on their use of the sales process and say,  
14 well, you know, you weren't very assumptive, or you didn't  
15 pivot, or you didn't ARC, or, you know, those things.  
16 They'd be kind of critiqued by that.

17                   Quicken also monitored the loan consultants from a  
18 control center in the middle of the sales floor called the  
19 bridge. In the bridge, the bridge team monitored every  
20 lead given to these people, I mean, when they were called,  
21 how long the calls took. It wasn't uncommon for a manager  
22 to come up to a loan consultant and ask why they hadn't  
23 been on the phone for X period of time or why one call took  
24 so long or why a lead hadn't been called X number of times.  
25 They had all that information running real-time. The

1       technology was fantastic there at Quicken and they could  
2       definitely tell what loan consultants were doing.

3                   Quicken not only monitored the loan consultant's  
4       phone calls, they monitored their e-mails and internet  
5       usage. Quicken's managers knew exactly what every loan  
6       consultant was doing almost every day. Not even activities  
7       outside of work were necessarily off-limits. One of the  
8       loan consultants will tell you about how she changed her  
9       profile on monster.com from home, came back into work the  
10      next day, or shortly thereafter, and was called into her  
11      manager's office and asked why she was looking for a new  
12      job.

13                   So because of this high-pressure, constant  
14       monitoring, stress and long hours, most loan consultants  
15       did not make it at Quicken very long. Many of them just  
16       burned out. They worked such long hours, they tried so  
17       hard, the pressure was so great, they really just couldn't  
18       take it. They either burned out and quit or they couldn't  
19       meet their sales quota and they were fired.

20                   The plaintiffs in this case made it approximately,  
21       on average, the 300-plus plaintiffs, on average  
22       approximately 8 months, which is longer than most of the  
23       people -- many of the people they started with. So that's  
24       hired and trained, that's motivated and monitored as  
25       salespeople.

1                   Let's talk about judge. I already kind of  
2 mentioned, like you would expect with a sales job, a loan  
3 consultant's performance was judged almost solely in terms  
4 of sales production. A loan consultant's daily performance  
5 was judged by how many loans they'd sold, how many \$500  
6 deposits they'd collected, how many dial-outs they'd made,  
7 how much money the loans they'd sold generated for Quicken.  
8 You will see that by far the most common reason loan  
9 consultants were disciplined and terminated was for poor  
10 production, which means poor sales.

11                   On the other hand, the great salespeople were  
12 promoted. Here is an announcement from a sales manager  
13 announcing this guy, they called him Charles The  
14 All-American Nance, promoted to senior mortgage banker. In  
15 other words, he was a loan consultant. Then he got  
16 promoted to senior loan consultant. And here is the reason  
17 given -- or the number one reason given for his promotion:  
18 Number one, he is a salesman. Chuck loves to sell. The  
19 difference between Chuck and most other salespeople is his  
20 enthusiasm and ability to build rapport with any type of  
21 person. He loves to create. Chuck's strength is in  
22 creating great responses to objections and pivoting back to  
23 the sale. That is a natural ability. I call him a  
24 salesman's salesman. If you really enjoy selling, you  
25 should come by and listen to the All-American create some

1 sales music.

2 These are the guys that got promoted. These are  
3 the guys that make it up the chain. The really good  
4 salesmen. And again, nothing wrong with that, but that's  
5 what you would expect because it's a sales job. The people  
6 who sell succeed. The people who do not sell enough fail.

7 Now, finally, pay. Are they paid like  
8 salespeople? You bet they are. They are paid a salary and  
9 commission. A sales commission. They got a base salary  
10 and then a commission based on how many loans they sold and  
11 not on how people they advised or consulted or how much  
12 they analyzed the information they obtained through the  
13 sales process.

14 Indeed, loan consultants are taught to increase  
15 the cost of the loan by increasing the interest rate or  
16 adding points or extra fees from what the customer  
17 qualified for on Quicken's computerized price sheets. In  
18 other words, they would up-sell them. They were taught how  
19 to do it, how to increase the rates, add points or add  
20 extra fees. So here would be the line they'd have to sell  
21 the loan at, that's the minimum. They'd raise it above  
22 that. If they do they'd actually earned an extra  
23 commission for doing that. They called that creating  
24 overage. They also called it raising the green bar. If  
25 the loan came back at this price through Quicken's

1 computerized system and they sold it for this much, they  
2 just raised the green bar and they got an extra commission.

3 Now, on the other hand, if the loan consultant sold  
4 the loan for less than the mandatory cost generated by  
5 Quicken's computerized system, that's called an underage or  
6 a red bar loan. Loan consultants had to get preapproval  
7 from a manager to sell a red bar loan and their commission  
8 is reduced for doing so. So loan consultants were actually  
9 paid more for running up the price of a loan on the  
10 customer, as you would expect in a sales job.

11 Loan consultants' supervisors were paid by  
12 commission also. For example, one of the managers, Mark  
13 Mazey, made \$300,000 in 2003, and 80 percent of that came  
14 from commissions based on his team of loan consultants'  
15 sales performance. This explains why, as you will learn  
16 from the plaintiffs' testimony and from a lot of these  
17 e-mails and voice mails that you will hear and see, that  
18 Quicken managers were so aggressive about pushing these  
19 guys to sell, sell, sell, and work such outrageously long  
20 hours to do so.

21 Now, the loan consultants got a salary of \$24,000 a  
22 year, plus commission, despite Quicken's constant dangling  
23 the prospect of huge commissions in front of the loan  
24 consultants as they worked these 60-plus hours a week. The  
25 average total pay for the loan consultants in this case is

1      40 grand a year. And the most typical loan consultant in  
2      this group earned \$35,200. This was good money then, and  
3      certainly it's good enough money now in the current  
4      economic environment, but not when you are working 60 to 70  
5      hours a week to earn it. Very few of the plaintiffs  
6      actually made the six figures that Quicken was constantly  
7      telling the sales force it could make.

8           So that's what we know. Hired and trained,  
9      motivated and monitored, judged and paid as salespeople,  
10     because their primary duty was sales. But despite all this  
11     evidence of sales, Quicken's executives and managers will  
12     also try to sell you on the claim that sales was not the  
13     loan consultants' primary duty. They will say that the  
14     primary duty was to dig deep, gather financial information  
15     and provide a financial analysis, provide financial advice,  
16     provide financial consulting on the customer's behalf.  
17     They will claim that sales was only a small part of the  
18     process, far secondary to this analysis, advice,  
19     consulting, all on the benefit of the customer. But the  
20     evidence will show that they gathered only what they needed  
21     to make a sale, and they dug only as deep as necessary to  
22     build rapport and define that emotional hook to help them  
23     sell the most expensive loan they could get the customer to  
24     buy.

25           For loan consultants, it was about getting that

1      \$500 and making a sale, not about sharing extensive  
2      financial knowledge and advice with the customer. Instead,  
3      loan consultants were given warnings like this one. This  
4      is from a sales trainer: Just listening to your calls this  
5      week, it is evidence that you have vast knowledge of the  
6      mortgage industry, as well as our products here at Quicken.  
7      The key is not to let this knowledge deter you from the  
8      task at hand.

9           Now, Quicken will say loan consultants helped  
10     customers, that they saved them money, that the customer  
11     benefitted from their world-class mortgage service. These  
12     things may or may not be true. But it doesn't really  
13     matter because this is about sales, not about whether those  
14     sales helped or benefitted or saved money. All salespeople  
15     can argue that their activities helped people, benefitted  
16     them, saved them money. Likewise, Quicken will likely say  
17     that these mortgages are extremely complicated.

18           The evidence will show that Quicken's sales  
19     process, right here, training and superior technology, made  
20     it simple enough that those with mortgage experience  
21     actually had to be careful not to let that get in the way  
22     of their primary duty, which is sales.

23           But, regardless, salespeople sell complicated  
24     things all the time. It doesn't make it anything other  
25     than sales. The loan consultants' job was to sell to the

1       customer and regardless of whether or not it's a  
2       complicated transaction or whether it helped, benefitted or  
3       saves the customer money, their primary job is sales.

4               Now, I want to shift gears a little bit and talk to  
5       you about hours worked. This sales job required the loan  
6       consultant to commit a tremendous amount of time and hours  
7       every week. The offer letter Quicken sent to the loan  
8       consultants before the lawsuit said 55-plus hours per week  
9       is what they were probably going to have to work. It turns  
10      out it was a little bit worse than that, a little bit worse  
11      than 55-plus. It was between 60 and 70 hours a week.

12               The loan consultants will tell you about their  
13       families dropping them off at Quicken after church on  
14       Sunday, about how their kids were often sleeping when they  
15       left, back in bed when they got home. Things like that.  
16       It was too much for these folks to sustain for over too  
17       long a period of time. That's why this was such a  
18       high-turnover job. All you'll need to confirm this is to  
19       see a few examples of the constant daily e-mails from  
20       management pushing the loan consultants to come early, stay  
21       late, work Saturdays and Sundays to, quote, do what it  
22       takes to be a successful salesperson. Loan consultants who  
23       would work late nights and into the morning hours were  
24       publicly praised. This loan consultant was there until  
25       1:30 in the morning, wow, that's dedication. Pressure was

1       high not to go home and those who did were not team  
2       players.

3               Managers were fond of telling the loan consultants  
4       exactly what it took. Here's one from a sales director to  
5       his team: For those of you staying late tonight, thanks.  
6       I had an offer to go the Pistons game, hang with my son and  
7       watch cartoons, or come in and be here with you. The  
8       choice was easy.

9               Here's another one: If I can cancel plans with  
10      my son, you guys can make arrangements to stay late,  
11      too.

12              This is kind of how it was. A regular daily shift  
13      was over 11 hours, just a regular old daily shift. The  
14      loan consultants will testify they regularly worked beyond  
15      their shift and came in before their shift. Saturdays were  
16      scheduled depending on the time period. They had one  
17      Saturday a month and one Sunday every six weeks but you  
18      will hear testimony that loan consultants were there, when  
19      you were behind, you were there on Saturdays and Sundays if  
20      you were weren't meeting your quota, and it started over  
21      every month. If you were a loan consultant who happened to  
22      be meeting their quota, you were still pressured to stay  
23      because you had to help the team. It was that whole sales  
24      concept.

25              So the pressure to work long hours was constant,

1       they either worked hours it took to meet those quotas and  
2       if they didn't meet their quotas, they were fired. And  
3       that's why they had the hours.

4           Frankly, really -- the people struggling worked the  
5       most hours because they were the ones that were getting  
6       really pounded about not meeting their quota, not helping  
7       their teams, et cetera.

8           Now, under the overtime law, it's not good  
9       enough for an employer to say that they warned the employee  
10      they would be working 55-plus hours a week. The employees  
11      are not required to know that their employer is violating  
12      the law by paying them the way they are paying them. You  
13      will also learn that -- and you will learn that these  
14      people did it because, they were told -- pressure -- if you  
15      want to make more money than the base salary of \$24,000,  
16      you better sell, sell. So they did. They worked to try to  
17      sell, sell, sell. And meet their -- all these sales quotas  
18      and all these team goals. You will also learn that the  
19      employers are responsible to track actual hours worked by  
20      their employees. In other words, the employer is not  
21      allowed to stand up and go, sure, we didn't pay you but  
22      what were your hours, when they didn't keep track. They  
23      have to keep track. When they don't, employees are allowed  
24      to come and tell the jury, or make a good-faith estimate of  
25      what their hours worked were, knowing that they don't have

1       time records, they weren't keeping track of it at the time,  
2       they have to do their best. And that's what the plaintiffs  
3       in this case are going to have to do because Quicken did  
4       not record the actual hours they worked. Plaintiffs will  
5       have to do their best and give you an estimate of the hours  
6       they worked at Quicken.

7               That estimate will be between 60 and 70 hours on  
8       average. But you can decide what number of hours is fair  
9       and reasonable, and that would be your job.

10               Now, there are 300-plus loan consultants in this  
11       case, as the Judge said. They worked at Quicken's first  
12       and largest call center in Livonia. Others worked in call  
13       centers in Troy and Laurel Park, and then near the end of  
14       our time period here in Cleveland, Ohio. Don't worry, as  
15       the Judge said, all 300 are not going to testify. In fact,  
16       the Judge is very sensitive in this case to keeping us  
17       moving. We are going do what we can to keep things moving.  
18       We are going to call a representative number of plaintiffs  
19       so that you can hear from them. We have also been  
20       encouraged not to bury you in paper and we have limited our  
21       exhibits, both sides have, so that you will be seeing  
22       examples, not full e-mail boxes, or boxes and boxes and  
23       boxes of stuff that each respectively have back in our  
24       offices.

25               In addition to our loan consultants, we may be

1      calling some of Quicken's own people in cross-examining  
2      them in our case instead of waiting to see if Quicken calls  
3      them. But the Judge will be watching the clock and both  
4      sides will do everything to keep things moving. We may  
5      spend more time with the first few plaintiffs that we call  
6      to give you a big, full picture. And then we will probably  
7      spend less and less time with the plaintiffs as we go, just  
8      enough to give you comfort that their experience was a  
9      shared one or a similar one across the board.

10           Now, Quicken Loans was a major player in the  
11      mortgage industry, or they are a major player in the  
12      mortgage industry, precisely because of sales. Selling is  
13      how they got where they got. In every contest they  
14      emphasize sell, sell, sell. Now, in an attempt to avoid  
15      paying overtime, suddenly what was always sales, and never  
16      any doubt was sales, is something else.

17           But when not defending a lawsuit, when not knowing  
18      the lawsuit was going to happen, when they didn't know it  
19      mattered to do anything but just tell it exactly like it  
20      was, Jay Farner said it best. This is the guy in charge of  
21      all the loan consultants.

22           April 2004, we sued them very shortly after that.  
23      Now, Quicken's managers are great salespeople. And I feel  
24      like -- my opening statement feels like I'm disparaging  
25      salespeople because -- all I'm doing is pointing out that

1       it was sales and, again, there's nothing wrong with sales.  
2       What is wrong is saying it's not sales to avoid overtime  
3       pay.

4               And they are going to come in here, these managers,  
5       and probably try to use the same techniques they teach  
6       their loan consultants, to sell you on the claim that these  
7       loan consultants weren't salespeople. They were hired and  
8       trained, motivated and monitored, judged and paid as  
9       salespeople because their primary duty was sales. The  
10       evidence will show that Quicken is legally responsible to  
11       pay them for overtime their worked over 40 hours a week,  
12       and that typical week would be between 60 and 70 hours.

13               For all these reasons, at the end of the trial,  
14       I'm going to stand back up and I'm going to ask that you  
15       find that the primary duty was sales and that you give them  
16       a just and reasonable number of hours of overtime for doing  
17       it.

18               Thanks a lot your time.

19               THE COURT: Thanks, Mr. Lukas.

20               Would the defense like to offer an opening  
21       statement to the jury at this time.

22               MR. MAYER MORGANROTH: We would, Your Honor.  
23       Would the Court want to take a break?

24               THE COURT: Come right on up, Mr. Morganroth, if  
25       you're ready to go. Thank you, sir, the podium is yours.

1 MR. MAYER MORGANROTH: Your Honor, thank you.

2 THE COURT: Thank you.

## OPENING STATEMENT

4 MR. MAYER MORGANROTH: Members of the Jury, thank  
5 you for your sacrifice and for the hard work I know you are  
6 going to have to do. We say that every time and we mean  
7 it. We are used to saying it but never used to watching  
8 people go through that.

9                   My name is Mayer Morganroth. You've have already  
10                  been introduced to the members of the defense lawyer, et  
11                  cetera, et cetera, and I don't think it's necessary to go  
12                  beyond that again.

13 Now, there are two times, as the Court has told  
14 you, that the lawyers can address the jury. The opening  
15 statement, which you've already heard plaintiffs', wherein  
16 we tell you what we intend to prove and give you a road  
17 map, as the Court has told you. The purpose, of course, is  
18 to get you with the road maps so you get an understanding  
19 of what we intend to prove so when it comes on, you will  
20 have some understanding of what we are doing.

21 The second time is the closing argument. The  
22 closing argument is when we are permitted to argue based on  
23 upon what we understand we did prove to the jury. Neither  
24 one is evidence, as the Court has told you. It's our  
25 opportunity to be able to address the jury directly.

1           You have also been told about how we don't greet  
2       jurors, we don't say hello, we don't smile. We even go  
3       beyond that. We try to avoid getting on the same elevator,  
4       because it's only appropriate to have noncontact with  
5       jurors.

6           Now, each side is highlighting what they feel  
7       they are going to prove. And the jury has a role as the  
8       judge of the facts. That's why, once you were sworn in, we  
9       stand up. Because even though you don't have robes on, you  
10      are really robed as the judges of the facts and you have an  
11      important role, just as important as the Judge, who  
12      actually, of course, is the decider of the law and, of  
13      course, does the other things that the Court has identified  
14      for you. He is also the referee for the rules of  
15      procedure, and as the Court has instructed you, to see that  
16      each side has a fair trial.

17           Now, the evidence will show that this case is  
18      about 300 some-odd former employees at Quicken Loans. Each  
19      of the particular plaintiffs held a job position as a  
20      mortgage banker, which was also referred to as a loan  
21      consultant or loan officer at Quicken Loans. The position  
22      of a mortgage banker is heavily regulated by the  
23      government. There are licensing requirements in virtually  
24      all the states that Quicken Loans does business in.

25           They do business in 50 states. That's why, as

1       you saw, I probably chuckled a little when they said 4:00  
2       is early in the day. They are doing business in Hawaii,  
3       which is 10:00 in morning. There is different shifts. So  
4       certainly it may be early in the day because it could be  
5       10:00 where the business is being done.

6               The job of a mortgage banker at Quicken Loans is  
7       a salaried professional position providing financial  
8       mortgage services to Quicken Loans' clients.

9               Each of the plaintiffs, you will find out, turned  
10       out to be a short-term employee who worked at Quicken Loans  
11       for a brief period of time during the portion of time frame  
12       of May 17th, 2002 until September 8th, 2006. And the  
13       plaintiffs' claims relate only to that time frame, May 17,  
14       2002 to September 8th, 2006.

15               You will see evidence, you will see documents,  
16       agreements that each plaintiff accepted specifically, and  
17       understood from the beginning of their employment, and  
18       agreed to the compensation as follows: A guaranteed base  
19       salary in the amount between \$24,000 and \$28,000 a year for  
20       all hours worked.

21               By the way, you will also see that they  
22       understood they were exempt. It's right in their contract.  
23       They were exempt from overtime. They were paid the base  
24       guaranteed salary, whether they worked for more or less  
25       than 40 hours a particular week. They also got

1       commissions, which were paid to the plaintiffs, providing  
2       them with upside of earnings between \$100 and \$200,000 a  
3       year.

4               As you heard in the opening statement of  
5       plaintiff, one of them was making \$300,000. Gee, it would  
6       have been nice to just give them overtime and take all that  
7       money back. Right? I don't think you would have been so  
8       happy with that.

9               Which mortgage bankers at Quicken Loans  
10      earned -- all of them earned that base salary and  
11      commission. Plus, they had a comprehensive benefits  
12      package which was provided to the plaintiffs. We didn't  
13      hear anything about that but we will show you that package.  
14      They got company-paid medical benefits, dental benefits,  
15      and vision benefits. They got short and long-term  
16      disability, life insurance, accidental death and  
17      dismemberment insurance. They got a flexible spending  
18      account, tuition reimbursement, paid time off for  
19      vacations, sick time, holidays and for parenting. They got  
20      company-matched 401(k) contributions, discounted home  
21      loans, home internet connection assistance, gym membership  
22      reimbursement, assistance with purchasing a home computer.  
23      You will hear in the evidence, they got all these things.  
24      Not just the pay and commissions, they also got all these  
25      benefits.

1                   You will hear witness testimony, and see  
2 documents and agreements, establishing that the  
3 compensation package over the mortgage bankers was  
4 structured so that it would be better for the mortgage  
5 bankers than if they were paid hourly with overtime. You  
6 will see they actually made more money than if they got  
7 overtime.

8                   High-level management witnesses from Quicken  
9 Loans will explain that because the position was a salaried  
10 professional position, Quicken Loans designed a  
11 compensation package in order to be better for the mortgage  
12 bankers than if the mortgage bankers were paid on an hourly  
13 basis with overtime. All these people made more than if  
14 they were just paid overtime, considerably more, and the  
15 evidence will show that.

16                   But after agreeing to this and accepting the  
17 generous compensation package, during the entire time they  
18 worked at Quicken Loans, each plaintiff is now seeking  
19 overtime on top of, and in addition to, their guaranteed  
20 salary they were paid for all hours they worked, and  
21 overtime even on top of and in addition to the commissions  
22 they were paid; and on top of the benefits.

23                   You will hear testimony that not a single  
24 plaintiff ever contended that they should've received  
25 overtime on top of their guaranteed salary and on top of

1      their commissions. Or that they were entitled to anything,  
2      or paid anything, beyond that which they were paid any time  
3      that they were at Quicken Loans. Never complained or said  
4      they were entitle to more. You will hear testimony that  
5      didn't come about until they were solicited for a lawsuit.

6               Now, you heard statements as to what will be  
7      shown as the hours that particular plaintiffs worked. We  
8      will show those are fabrications. You will hear certain  
9      plaintiffs claim that they worked 70 hours per week for  
10     each and every week that they worked at Quicken Loans. You  
11     will hear other testimony that will show that 70 hours a  
12     week was certainly impossible. The testimony will show  
13     that, if true, they would have worked 14 hours a day during  
14     a five-day workweek. For example, they worked from 9:00 in  
15     the morning until 11:00 p.m., according to what you heard  
16     in the opening statement. The evidence will show they did  
17     not. The testimony will show that even if Saturday was  
18     used as a workday, on occasion, that would mean the  
19     plaintiffs would have had to work over 11.5 hours each and  
20     every day for that six-day workweek without any breaks for  
21     lunch or any other reasons.

22               Approximately 25 plaintiffs will testify  
23     they -- and will make a preposterous attempt to claim the  
24     hours worked by each of the 300 some-odd plaintiffs who are  
25     not testifying, but their testimony will reveal they don't

1 have the slightest clue on how much the other nontestifying  
2 plaintiffs worked. In fact, they didn't even work in the  
3 same period of time as a lot of them, never even saw them.  
4 They weren't even employed at the same time.

5 The testimony will reveal that there were over  
6 6,000 employees at Quicken Loans during the time period at  
7 issue in this case. Now, you've seen a couple of slides,  
8 just to show you how things may be taken out of context or  
9 not appropriate or correct. One was ...

10 (Brief pause)

11 MR. MAYER MORGANROTH: Jeff Sherman was there at  
12 4:00 in the morning. Well, you weren't told but the  
13 evidence will show that Jeff Sherman was not a mortgage  
14 banker. Had no role as a mortgage banker. He was a  
15 computer technology employee. So, he being there at 4:00  
16 in the morning trying to correct a computer has nothing to  
17 do with being a mortgage banker or overtime in that  
18 position.

19 Another one that you saw is David Lee, regarding  
20 the Pistons game. The evidence will show he was not a  
21 mortgage banker either. He was a regional vice president  
22 having nothing to do with mortgage banking, as a mortgage  
23 banker.

24 So, when you see these things, you will see what  
25 the real evidence is. You will also see that there is some

1        20, 30 -- there are e-mails or communications that talk  
2        about sales. Evidence will show there were hundreds of  
3        thousands of communications that don't mention sales and  
4        all the plaintiffs are doing is cashing in on one word  
5        that's in maybe 20 or 30 documents or 20 or 30  
6        communications out of hundreds of thousands. You wanted to  
7        do that, the evidence will show, that would be like one  
8        statement or -- in effect, it was once said if you put  
9        3,000 monkeys in a room for 4,000 years with typewriters,  
10       by accident one of them will come out with Shakespeare's  
11       Hamlet.

12               So if you take -- and you'll see there is such a  
13        limited few amount that say "sales" in them and they are  
14        cashing in on using that word because it was used.

15               Now, the testimony will further show that the  
16        mortgage bankers were assigned to teams and those teams  
17        didn't even work the same time, as I've related to you  
18        before, when they talk about coverage being early in the  
19        day at 4:00. They staggered their time frames. So it  
20        could have been a group that just came on on top of it  
21        because they had to cover different time zones.

22               The testimony will confirm even the mortgage  
23        bankers working the same teams worked different hours,  
24        different amount of time. They got paid time off, aside  
25        from the benefits we talked about before, accommodations

1 for personal business. They came in early very often  
2 but -- and worked late sometimes, but they left early as  
3 well. Some took breaks throughout the day. Some even  
4 participated in the playtime which was given at Quicken  
5 Loans. Quicken Loans also was a fun place to work. It had  
6 arcade games, ping-pong contests they engaged in while they  
7 were there. They also had karaoke, nerf football, and many  
8 other things that occupied people to enjoy their workday.

9 The evidence will also be undisputed that none of  
10 the plaintiffs kept track of their hours that they worked,  
11 let alone the hours that other mortgage bankers worked.  
12 The evidence will show there was no reason to do that  
13 because each plaintiff knew and understood and agreed from  
14 the start they were salary, not hourly. Their agreements  
15 say it as well. And you will see their agreements, where  
16 they say, we understand that's our total compensation.  
17 Each plaintiff knew and understood and agreed there was no  
18 overtime right from the beginning.

19 Now, it will be up to you, the jury, to determine  
20 whether each plaintiff has satisfied their burden of proof  
21 as to the amount of hours worked for each and every week  
22 each plaintiff claims that they should receive overtime.  
23 Of course, you will be using your common sense and judgment  
24 and your own experience to make the determination.

25 Secondly, not only will the testimony and

1       evidence reveal that the hours that plaintiffs claim to  
2 have worked was absurd, but the plaintiffs were not  
3 entitled to receive any overtime at all because there is a  
4 exemption from overtime payment called the administrative  
5 exemption for financial services in the Fair Labor  
6 Standards Act. The exemption applies to the position of  
7 mortgage banker at Quicken Loans during the time frame at  
8 issue in this case.

9           There is a two-part test to the administrative  
10 exemption. One is called the duties test, whether the  
11 duties, the job, are office work, not manual labor, and  
12 directly relate to the general business operations of  
13 Quicken Loans or its clients. You will hear evidence that  
14 that's what it related to, the clients and to Quicken  
15 Loans. You will see not 20 times but hundreds and  
16 thousands of times that it says, client is number one, do  
17 for the client.

18           The second test is the discretion and independent  
19 judgment test, whether the mortgage bankers at Quicken  
20 Loans have the ability to make judgment calls regarding  
21 matters of significance, even if those judgment calls were  
22 in the form of recommendations to upper management.

23           You will hear evidence and see agreements and  
24 documents that gave them discretion and said they could  
25 charge premiums, they could do this, and they could go back

1 and they are able to enumerate, whatever, they are able to  
2 call the appraiser and see if comparables were correct.  
3 And we will go through it. There are a hundred different  
4 variations of loans.

5 You will hear from the testimony the nature of  
6 the job of a mortgage banker. We'll call several witnesses  
7 that served as mortgage bankers during the time frame of May  
8 2002 until September 8, 2006. And those witnesses will  
9 explain, in depth, the nature of what they and the mortgage  
10 bankers did. You know, you can tack the word sales on it  
11 all you want just because the word is used, and used on  
12 occasion, was selling, but that's not the nature of the  
13 job. You can tack anything you want on it, and the  
14 evidence will show, sure, started to take the word out,  
15 sell. Because the plaintiffs, through their attorneys, all  
16 of a sudden decided that's the way to cash in on the word  
17 sell. That's all they have, the word sell. And that they  
18 think defines the person, just like saying he has a blue  
19 suit on or she as a brown dress on, that that defines the  
20 person.

21 The witnesses will explain the nature of Quicken  
22 Loans' business operations and the role of the mortgage  
23 banker during this applicable time frame. The interesting  
24 thing is, somehow getting that \$500 application fee becomes  
25 the sale. That's the beginning of all the work. That's

1 like the retainer for a lawyer, who now four years later is  
2 trying the case. By the way, that \$500 is refunded the  
3 client when they close. That's not a closing because of  
4 that occasion. The closing is after all the work is done  
5 and all the advice and all of the mental anguish and work  
6 that is done to make a mortgage a mortgage for a particular  
7 person in a loan.

8 The number of plaintiffs that are called as  
9 witness will testify the topic as well. Their  
10 characterization of their job duties will conflict with  
11 other witnesses who will be testifying about this topic.  
12 It will be for you to judge which witnesses are accurately  
13 characterizing the nature of the job duties. You will have  
14 help, as I said before, in making that determination by  
15 looking at the agreements, the job duties that are  
16 described in the mortgage bankers' documents and agreements  
17 at Quicken Loans. Those agreements were signed and  
18 acknowledged by each one of the plaintiffs.

19 Now, you will also hear evidence that -- and it  
20 seemed to be not to expose this particular point -- that  
21 there was a marketing team entirely separate and distinct  
22 from mortgage bankers. They are the ones that called and  
23 got leads. There was another division called front line,  
24 and front line also got the leads, not the mortgage  
25 bankers. When they got it, they were already secured by

1        those particular parts of Quicken Loans, and paid as  
2        employees to do so, not as mortgage bankers.

3                Also, you will hear evidence and you can use your  
4        common sense to the fact that when a particular  
5        professional is getting a client, you can always say that's  
6        selling. Isn't the plaintiff's lawyer trying to sell you  
7        when he's selling the jury? Isn't a doctor when they see a  
8        patient trying to sell them to become their doctor? Isn't  
9        a lawyer doing the same when they get a retainer? Once  
10        they get the retainer, as I said before, then the work goes  
11        on. They are all professionals. They are not paid  
12        overtime. When we are in trial, I don't know who could  
13        afford to pay us overtime for the amount of time that goes  
14        into a trial.

15                Now, what you are hearing is using the word  
16        selling as a generic term. You will hear evidence that  
17        Quicken Loans was ranked number one by J.D. Power in  
18        customer service and they were top 20 in Forbes as a place  
19        to work for. And you'll hear evidence that the employees  
20        were the ones who confidentially were contacted to vote by  
21        those particular entities, and you will see that they were  
22        voted by the employee voting to make them in those  
23        categories.

24                You will see a multitude of materials saying that  
25        they should focus on the right thing, they should do

1      ethics, they should do the right thing for the client, the  
2      client is number one. You will see documents and papers  
3      galore to the fact that they have fiduciary duty to their  
4      clients, that they are to obey the laws and regulations of  
5      the United States and every state that they are operating  
6      in. You will hear duty after duty they had to perform and  
7      knowledge they had to have, not just as mortgage banking as  
8      such but the laws, rules, regulations. You will hear  
9      evidence that, let alone did they go to school for four and  
10     a half weeks before they could even sell anything --  
11     supposedly as they call it -- before they can do a mortgage  
12     even; after that, they had to have continuing education,  
13     and they would have continuing education 20 hours here, 40  
14     hours here or 18 hours here, all during the time that they  
15     were working. And they had to have that continuing  
16     education also to be licensed in other states. And they  
17     had to take tests in those states. And they had to conform  
18     to their laws and rules and regulations.

19           Now, one of the reasons why you will see in the  
20     evidence that Quicken Loans survived these times, when  
21     mortgage companies went under like crazy, is because  
22     Quicken Loans did their jobs and performed their duties for  
23     their clients, and made them number one.

24           Now, when you talk about securing or selling, the  
25     plaintiffs were contacted to become plaintiffs. There were

1 seminars for them to get them to become plaintiffs. I  
2 guess that makes everybody salespeople who were the lawyers  
3 who got them.

4 Now, you will hear evidence that there are  
5 training books, and huge books, you will see these books  
6 that those mortgage bankers had to learn and exercise. You  
7 will see that they had the type of performance required  
8 that made them professionals, and because they use the word  
9 selling 20 or 30 times out of hundreds of thousands of  
10 documents, but even if you used it a multitude of times, it  
11 doesn't make the person a salesperson. And you will see  
12 that these people who never complained, these people who  
13 were in constant training are generally the people that had  
14 job after job before, job after job afterwards, didn't stay  
15 at any place very long at all and didn't stay at Quicken  
16 very long. And you will see that even though they stayed a  
17 short period of time, they generally made more than on  
18 their application they said they would like to make, and  
19 you will see also that they made substantially more, a  
20 great deal more, on the commission and bonus than they  
21 would have made in overtime and benefits, I should say,  
22 along with the bonus. And now what you will see what they  
23 are doing, is not giving back the commissions, not giving  
24 back the benefits but asking now for overtime. It's up to  
25 you to determine whether that's appropriate and whether or

1 not, in reality, these people who have continuing education  
2 have continued training, have hundreds -- hundred different  
3 options and loans, all kinds of discretion and work to do  
4 are salespeople. Thank you very much.

5 THE COURT: Thank you very much, Mr. Morganroth.

6                   Ladies and gentlemen, the lawyers have now  
7 concluded their opening statements, which were, as  
8 advertised, their version of an overview of what the  
9 evidence in the case was to have or will be shown. And now  
10 the actual evidence will begin. Remember, what you just  
11 heard is not evidence. What comes from here on in from  
12 mouths of witnesses and the documents that they introduce  
13 will, in fact, be evidence.

14 Mr. Lukas, your first witness, please?

15 MR. NICHOLS: Lindsey Tittensor.

16 LINDSEY TITTENSOR

17 (The Witness was Sworn)

18 THE COURT: Have a seat in

19 Sit back and relax. You don't have to speak directly into  
20 the microphone will pick you up quite nicely.

21 Mr. Nichols, the floor is yours.

22 MR. NICHOLS: Thank you, Your Honor.

23 || DIRECT EXAMINATION

24 BY MR. NICHOLS:

25 Q. Let's start off by telling the jury where you live.

1       A. I live in Garden City.

2       Q. Let's try this a little better here.

3       A. I live in Garden City, Michigan.

4                    MR. NICHOLS: Can you folks hear that?

5                    JUROR: (Indicating).

6                    THE COURT: You might have to speak a little  
7 louder than your normal tone of voice. Don't speak right  
8 into it or you won't like that.

9                    Go ahead, Mr. Nichols.

10                  MR. NICHOLS: Thank you, Your Honor.

11                  BY MR. NICHOLS:

12        Q. Tell us your educational background.

13        A. I have a high school diploma and a degree from the  
14 University of North Florida.

15        Q. What's your degree in there?

16        A. Finance.

17        Q. And in the degree of finance, did you study anything  
18 about mortgages?

19        A. I studied real estate but there -- it was more  
20 commercial than any sort of lending.

21        Q. When is the first time you ever saw a mortgage  
22 document?

23        A. At Quicken.

24        Q. Tell us how you got the job at Quicken.

25        A. I applied online and then I was -- you know, talked to

1      a couple friends that knew people that worked there. And  
2      I'd gotten in touch with a recruiter out in the Troy  
3      location, and I went and interviewed there.

4      Q.     What was the position you were interviewing for?

5      A.     Mortgage banker.

6      Q.     All right. And who did you interview with?

7      A.     I interviewed with, not only the recruiter, but I also  
8      interviewed with Jay Farner.

9      Q.     How did they describe the job to you?

10     A.    They told me it was a sales position.

11     Q.    They told you it was a sales position?

12     A.    Uh-huh.

13     Q.    Did you discuss how much money you would be making?

14     A.    Yes.

15     Q.    What did they tell you?

16     A.    You would make \$24,000 a year, plus commission.

17     Q.    And did they tell you how much money you would expect  
18    to make in a year?

19     A.    They said upwards of, you know, \$75,000 people would  
20    make their first year.

21     Q.    And what turned out to be your job duties?

22     A.    Selling mortgages.

23     Q.    You heard Mr. Morganroth say it was just a word, we  
24    just pulled "sales" out of the air.

25     A.    Uh-huh.

1       Q. Was that a word you heard at Quicken before you talked  
2 to us, or what?

3       A. Yes.

4                    MR. MAYER MORGANROTH: Objection, Your Honor.

5                    The opening statement shouldn't be used to a witness.

6                    THE COURT: That's sustained. Go ahead and focus  
7 on the facts, Mr. Nichols.

8                    MR. NICHOLS: Sure.

9        BY MR. NICHOLS:

10      Q. You heard the word "sales" at Quicken, I take it; is  
11 that right?

12      A. Yes.

13      Q. That was in your very first interview, you heard that;  
14 is that correct?

15      A. Uh-huh.

16                    MR. MAYER MORGANROTH: Objection, Your Honor.

17                    That's leading.

18                    THE COURT: Let's ask open-ended questions and  
19 not testify for the witnesses, Mr. Nichols. Go ahead.

20                    MR. NICHOLS: Sure.

21        BY MR. NICHOLS:

22      Q. Just describe generally what you did in your job at  
23 Quicken.

24      A. My job was to make outbound calls and get people on  
25 the phone and ultimately pull credit with them, see if they

1 could qualify for a mortgage, and call them back and sell  
2 them the mortgage.

3 Q. Okay. Did you receive any training to get this job?

4 A. To get the job? After I got the job I did receive  
5 training.

6 Q. Tell us about the training.

7 A. Training was four weeks of intense training, Monday  
8 through Friday. It was learning about the different  
9 programs and the different products that they offered, and  
10 learning about how to overcome objections to clients and  
11 doing your best on the phones, and learning the phone  
12 system, the LOLA system and the Lakewood system.

13 Q. Let's take those one at a time. What is an objection?

14 A. An objection is when someone -- maybe you're pitching  
15 them a program and they have a concern. The rate is too  
16 high or I want to talk to my spouse, you know, they are not  
17 going with the flow.

18 Q. The rate is too high, I want to talk to my spouse.

19 Can you recall any others?

20 A. You know, they were hesitant of Quicken because maybe  
21 it wasn't their person down the street, the normal banker  
22 that they were with, the closing costs were too high.

23 That's what I recall.

24 Q. You remember your training on those issues?

25 A. Yes.

1       Q. Let's try a couple of them.

2       A. Okay.

3       Q. Spousal might be, my wife and I own the property  
4       together, I want to talk to my wife first.

5       A. Okay. Well, I understand that, you know, you and your  
6       wife want to make this decision together, however, rates  
7       are on the rise. What a great thing to do is, you can go  
8       ahead and get the loan started. You can lock into the  
9       rates. When you are able to see your wife tonight, you can  
10       say, honey, great news, we have this great mortgage we've  
11       already been pre-approved for.

12                   So why don't we go ahead and get the documents  
13       started. Did you want to put that \$400 security deposit on  
14       a Visa or MasterCard?

15       Q. Suppose I said I want to use the bank down the street.  
16       I talked to Wells Fargo. I have a friend that works there.  
17       I have a good rate. What would you say?

18       A. I understand, you know, you might want to walk down  
19       the street and use the bank down the street. But I also  
20       understand the convenience of Quicken Loans. You are  
21       calling me, you know, it is 8:00 on a Tuesday night, while  
22       your bank down the street isn't there. I am. We are able  
23       to get these documents signed online for you. And once you  
24       fax everything over to me, we can do everything via phone  
25       and you don't ever have to go anywhere.

1       Q. Okay. I'm hesitant about Quicken. I don't really  
2 know much about that company.

3       A. We are actually one of the, you know, number one  
4 mortgage banker -- mortgage lenders in the U.S., and then I  
5 would go into more detail.

6       Q. And is this all training you learned or did you come  
7 up with this on your own?

8       A. We learned these in training.

9       Q. How long between the day you started and the very  
10 first loan you ever sold?

11      A. I believe it was a couple months. Maybe from the day  
12 I started to the day I sold the loan, maybe two months.

13      Q. Were you on the sales floor -- how long before you  
14 were on the sales floor trying to sell loans?

15      A. I was on the sales floor after a month of training.  
16 And then I was trying to sell loans from day one on the  
17 sales floor.

18      Q. Do you recall if you made calls to various states?

19      A. Yes.

20      Q. Like, how many states?

21      A. I don't remember the exact number. It was, you know,  
22 I would say most states that I was licensed in.

23      Q. What team were you assigned to?

24      A. I was on The Vault.

25      Q. As in, like, V-A-U-L-T?

1       A. The bank vault.

2       Q. And who was in charge of that team?

3       A. Matt Zontini.

4                   THE COURT: Mr. Nichols, forgive me for  
5 interrupting, do you think we could get for the jury the  
6 time frame for this particular witness's employment at the  
7 company, please?

8                   MR. NICHOLS: We certainly can.

9                   THE COURT: Thank you.

10          BY MR. NICHOLS:

11          Q. When did you work there?

12          A. I worked there from the beginning of July of '05 until  
13 August 3rd of '06.

14          Q. So a little over a year?

15          A. Yes.

16          Q. I want to show you something, and I believe it's  
17 Exhibit 21, ask if you can identify this.

18          A. This was our sales process.

19                   THE COURT: Is there objection to Plaintiff's 21,  
20 Mr. Morganroth?

21                   MR. MAYER MORGANROTH: No objection, Your Honor.

22                   THE COURT: Thank you. We will receive  
23 Plaintiff's Exhibit 21.

24                   Mr. Nichols, please proceed.

25                   (Exhibit P21 was received)

1 BY MR. NICHOLS:

2 Q. I want to go through this with you and ask you about  
3 it. Do you see it there?

4 A. Yes.

5 Q. Step one -- first of all, did you follow this process?

6 A. Yes.

7 Q. Every time, or most of the time, or what?

8 A. Every time.

9 Q. Why did you follow it every time?

10 A. Because we were told that this was the sales process,  
11 no need to reinvent the wheel, and this was just what you  
12 did. This is how you handled your calls. This has got all  
13 the information you needed and this is how you could...

14 Q. Maybe before we get to that, step one, tell me what  
15 you had to do to get to step one.

16 A. In order to get to step one, I did have to dial  
17 outbound within LOLA to actually get somebody on the phone.

18 Q. Maybe we better start back at LOLA. What is LOLA?

19 A. LOLA is lead or loan -- excuse me, lead origination --  
20 I'm going to mess this up. I'm sorry, Loan Origination  
21 Lead Allocation system.

22 Q. What does that system do?

23 A. It was a system on my PC that was, kind of, tied into  
24 my phone system. So when somebody entered their  
25 information on a website, like LowerMyBills.com, if they

1       entered their first and last name, and maybe their address,  
2       and how much though owed on their house, or something  
3       basic, it would pop up through my LOLA screen. So from  
4       there I could just click up my mouse and it would ring on  
5       my headset.

6       Q.    Like, how many leads would you have to go through  
7       before you got to step one with one person?

8       A.    It depended on, I guess, you know, what kind of day  
9       you were having on the phones. Usually, you called, you  
10       know, maybe a dozen, or so, numbers before you actually got  
11       somebody live on the line.

12       Q.    And of the people you got live on the line, how many  
13       of them had expected your call?

14       A.    I mean, some people knew that they had filled out some  
15       information; some people didn't want to talk, that sort of  
16       thing. So it was, you know, you were kind of seen feeling  
17       them out, whether, okay, they knew they filled this out,  
18       they want to talk; or no, they don't want to talk, or  
19       anything like that.

20       Q.    Okay. You get somebody live on the phone. What do  
21       you say?

22       A.    I would start with just step one. I would just kind  
23       of introduce them, tell them where I'm from. And then, you  
24       know, ask them, you know, is now a good time? Okay.  
25       That's great.

1                   And then I would go through exactly step one,  
2 foreshadow and gain control of the call.

3 Q. What's foreshadow and gain control mean?

4 A. Foreshadow, I would basically foreshadow, kind of, you  
5 know, what's going to happen. And then gaining control, I  
6 was gaining control of the sales call saying that, you  
7 know, it was kind of like the, I'm in charge, I'm going to  
8 say, you know, like I'm saying on here, have you got a pen  
9 and paper handy. Here's my name and number and I give you  
10 my full name and number.

11                   All right. That's great. And then I go into my  
12 questions, so kind of take control over where I want the  
13 call to head.

14 Q. Then step two says, initial questions, create need,  
15 goals.

16                   What is going on in that step?

17 A. Right here, I'm, you know, initial questions so I'm  
18 kind of verifying, you know, where are you calling from.  
19 I'm getting some detailed information. Have you ever  
20 worked with Quicken Loans before?

21                   And then if they said no, you know, we went into  
22 this -- you kind of make them feel more comfortable working  
23 with an online lender.

24                   Then getting the basic information, you know,  
25 what type of home is this, your primary, secondary, making

1     sure it was a type of mortgage that we can do; you know,  
2     single-family residence, condo, town home, that sort of  
3     thing. And getting the basic informations out here.

4                   And then you are creating need to see, you know,  
5     what, does this client actually need from me and, you know,  
6     what is your goal, you know, from this mortgage. Are you  
7     looking to get cash out? Are you looking to refinance to  
8     save money? What are you looking to do?

9     Q. How long did step two take?

10    A. Step two could take a couple minutes, especially when  
11     you are getting, you know, creating need and you're kind  
12     of, you know, at that point, you're also -- and I know it  
13     says goals listing down there, but you are building rapport  
14     with the client. So, how long have you been with this  
15     home, that sort of thing, and you're finding more about  
16     them.

17                   Then, you know, looking to what they're doing.  
18     So you're looking to get cash out. Oh, what are you  
19     looking to get cash out for? You're looking to, you know,  
20     pay for your daughter's wedding, that sort of thing. So  
21     that could go on, I guess, as long as the client was, you  
22     know, talking with you. But that could go on for a few  
23     minutes, at least.

24    Q. Okay. And then what is step three?

25    A. Step three is the second foreshadow of process and

1 deposit. So that's, you know, I'm telling them, I'm sure  
2 they have a lot of questions. Let me just, kind of, tell  
3 you how the process works with Quicken Loans.

4 And it says, you know, I'm going to ask -- I  
5 pretty much read this verbatim with clients. You know, I'm  
6 going to ask you more questions so I can find out exactly  
7 what your situation is.

8 Then if it looks as if we can help you, I will  
9 get your Social Security number and I'll pull a credit  
10 report. I should be able to call you back within, about,  
11 you know, 10, 15 minutes.

12 At that point we will review your situation and  
13 determine if you qualify. If you do so, then I'll accept a  
14 \$400 good-faith deposit that is applied at closing. Then  
15 we'll get you into process.

16 So, now, let's get back to my questions. Tell me  
17 about your job. What do you do and how are you paid?

18 Q. I noticed you said \$400 deposit, not \$500 deposit.  
19 Why did you say \$400 deposit?

20 A. Because we could basically get away with selling \$400  
21 good-faith deposit to cover the initial appraisal in a lot  
22 of states, so it just sounded better than \$500.

23 Q. Who let you ask for 400 instead of --

24 A. Our team leader said that was fine.

25 Q. Step four says, income, build rapport.

1                   Why was it necessary to build rapport?

2   A.   Because you want the person to trust you, and  
3       obviously like you, because they are calling from anywhere,  
4       you know, in the U.S. and, you know, they are not down the  
5       street.  They can't sit in front of you.  So you are  
6       wanting to build that relationship with them.

7   Q.   Step three -- or step five, it says, get SSM and third  
8       foreshadow, STC, new program intro, income box.

9                   What is going on in that step?

10   A.   This is the part where I'm kind of saying, you know,  
11       it looks like I might be able to help you.  What I'm going  
12       to do now is pull your credit and give you a call on what's  
13       your options.

14                   What I do is I get the credit information and  
15       then, you know, it says, like I said, great, I'll call you  
16       back within X amount of minutes.  Then if you qualify, we  
17       can let your loan process shortly.

18                   And then STC was Super Trial Close.  It was  
19       feeling the client out on how comfortable they were with.  
20       You know, are they going to be moving forward?  Do you  
21       think they're going to be giving a lot of objections?

22   Q.   You are talking really fast.  I'm sure she's  
23       struggling.

24   A.   Sorry.  Sorry.  They were saying, you know, it's kind  
25       of feeling out the client, if you think they are going to

move forward, if they are going to really give you objections up front when you're going to present the program or pitch the program.

4 So you can ask, you know, from my notes, assuming  
5 that you qualify, what would you (sic) using for your  
6 deposit, to let them know, you know -- to kind of remind  
7 them, I am going to ask for that deposit. Are you going to  
8 use your Visa or MasterCard, to kind of, you know,  
9 foreshadow it. It is still coming.

10 Q. I see. STC stands for Super Trial Close?

11 A. Uh-huh.

12 Q. And trial close -- what did you understand "close" to  
13 mean at Quicken?

14 A. Closing was actually closing the deal. They said,  
15 yes, you know, here is my deposit. I want to move forward  
16 with the loan.

17 Q. This STC right here is special type of close, a Super  
18 Trial Close?

19 A. Uh-huh.

20 || Q. Correct?

21 A. Yes, because you are, kind of, testing the waters  
22 right here.

23 Q. Is that a word they used around there, a super trial  
24 close?

25 MR. MAYER MORGANBOTH: Your Honor, objection.

1       The previous question is to -- identify who tells her  
2       anything, just is, that what "they" said. It could be  
3       anybody.

4                   THE COURT: That's a good point. I will sustain  
5       the objection and ask you to focus on who it is so that we  
6       can properly determine the admissibility of statements.

7                   Mr. Nichols, go right ahead.

8       BY MR. NICHOLS:

9       Q. Who told you STC means Super Trial Close?

10      A. Well, it was stated right here on the sales process  
11       and it was talked about, you know, with our team leader.

12      Q. Your team leader?

13      A. Any leaders, basically, it was stated on there. Then  
14       they would talk to --

15      Q. Is this common --

16                  MR. MAYER MORGANROTH: Objection, again, Your  
17       Honor. What team leader? Any team leader? There is 6,000  
18       people there.

19                  THE COURT: You will have an opportunity to  
20       cross-examine on some of those issues, Mr. Morganroth.

21                  In the meantime, be as specific as possible while  
22       still telling -- having the witness tell the story,  
23       Mr. Nichols. Go right ahead.

24                  MR. NICHOLS: Sure.

25       BY MR. NICHOLS:

1 Q. Who was your team leader --

2 A. Matt Zontini.

3 Q. And he would use this phrase?

4 A. Yes. And it was printed right there.

5 Q. What is the New Program Intro, or MPI? What is that  
6 about?

7 A. That's just saying, you know, I'm going to talk to you  
8 about a program that -- clients are choosing and that could  
9 be something on, we have a great interest-only mortgage out  
10 there. And you would just, kind of, give brief  
11 explanation, you know, to kind of get them interested.  
12 And, say, okay, I'm going to, you know, go ahead and look  
13 at the credit and I'll call you back in about 15, 20  
14 minutes.

15 Q. Where would you get those new programs from?

16 A. We would get e-mails telling us, you know, if a new  
17 program came out.

18 Q. Were there, like, programs that were encouraged at  
19 times?

20 A. Yes.

21 Q. How were they encouraged?

22 A. You would get e-mails out stating, you know, the  
23 benefits of these, you know, new program, why -- why this  
24 is a great program for clients, why you should sell this.  
25 You know, creative ways to sell this sort of thing.

1 Q. Okay. So how does the yellow side of this document  
2 end?

3 A. The yellow side is basically, I have their Social  
4 Security number, name, date of birth and I'm going to pull  
5 credit. I let them go. And then I'm pulling credit.

6 Q. Then tell the jury what happens next.

7 A. After I get off the phone, I go ahead and I pull  
8 credit. And then once it goes into the LOLA screen, that I  
9 already looked up their original information with -- LOLA,  
10 you know, can give you some ideas of some loans that, you  
11 know, they primarily can qualify for based on the  
12 information you have given it. And you also have matrix  
13 that you go to, and you, kind of, just, you know, say,  
14 okay, this is what I want, this is what I'm looking for.  
15 They have these things to qualify. This is what I'm going  
16 to go on.

17 Q. I'm not sure everybody is familiar with the term  
18 "matrix" but would you tell the jury what you mean by the  
19 word "matrix?"

20 A. Matrix was a huge document that each of us had at our  
21 desk. And it basically gave all the loan programs that  
22 Quicken had to offer and the qualifications for each  
23 program, so if they needed income documentations, W-2s,  
24 that sort of thing, it was all spelled out for you right on  
25 this matrix.

1       Q.    How hard was it to go down the matrix and determine  
2       the loan that you could sell?

3       A.    After you learn it, just took a couple minutes.

4       Q.    How much time was -- say, toward the end of your job,  
5       did it take to go from step one to step two?

6       A.    10, 15 minutes.

7       Q.    How about at the beginning of your job?

8       A.    At the beginning of the job, it did take awhile. It  
9       took you awhile to, you know, pull the credit. And you are  
10      looking at the matrix. You are also looking in LOLA. You  
11      are talking to, you know, maybe, your team leader, Matt  
12      Zontini in my case, or maybe another fellow teammate. We  
13      are role playing and, kind of, going through objections  
14      and, you know, different wants and needs and, kind of, you  
15      know, trying to pitch to each other on how I'm going to  
16      make the sale happen.

17      Q.    Let's go back to step five. Just so I'm clear, tell  
18      me everything you have done between step five and step six.  
19      You have pulled credit, you said?

20      A.    Uh-huh.

21      Q.    You've --

22      A.    I found a loan I'm going to pitch them. I've kind of  
23      written out the loan specifications. You know, this is the  
24      amount you are going to borrow, this is the rate. If they  
25      were saving money, I would say, you know, you are going to

1      be saving \$200 a month. You know, I would write down the  
2      specifications before I called them back.

3      Q.     I want to explore that term, saving them money. When  
4      you use the term "saving them money," what do you mean?

5      A.     I mean lowering their monthly payments.

6      Q.     Do you know if that was a common use of the words  
7      "saving them money" around Quicken?

8      A.     Yes.

9      Q.     Do you know if you were actually saving them money if  
10     you measure in terms of total payments?

11     A.     No.

12     Q.     Did anyone ever look at or train you to look at are  
13     you really saving them money or not?

14     A.     No.

15     Q.     So saving them money meant lowering their --

16     A.     Yes.

17     Q.     So you would calculate that number --

18     A.     Uh-huh.

19     Q.     -- is that right?

20              Then what did you do?

21     A.     Then I would, you know, get everything together and I  
22     would call them back. And again, you know, foreshadow the  
23     deposit and let them, you know, walk through some options,  
24     and, again, I'd pretty much read it verbatim, walk you  
25     through some of the options I have for you. Get your

1      feedback --

2      Q. Slow down. She can only type so fast.

3      A. I apologize. Let's walk you through some of the  
4      options I have for you, get your feedback and if everything  
5      looks good, we will accept the \$400 good-faith deposit and  
6      get your loan into process.

7                 And then I would do, you know, a review of goals  
8      and it's to get people starting to say yes. And it was to  
9      say, you know, let's make sure we are clear on some of your  
10     goals. Do you have that paper and pen handy? Great. You  
11     owe X amount, right?

12                And your current payment is X.

13                So they are saying, yes, yes.

14                And their main goal is to blank; is that right?

15                And they said, yes.

16                Mostly, you know, by accomplishing this goal,  
17      we'll be able to enable to -- I don't know, save for your  
18      son's college, or, you know, whatever they had told me.

19                And then they say, right?

20                And then they'd say, yes.

21                And that's where, you know, like it says, tie in  
22      emotionally, refer to vision goals from first call.

23      Q. Tie in emotionally --

24      A. Uh-huh.

25      Q. -- refers back to the other side of the sheet?

1     A. To the first call, when you would talk to someone and  
2     you would get, you know, an emotional reason why they want  
3     to refinance. They want to save money. They want to be  
4     able to, you know -- one client told me, I want to be able  
5     to take my wife out to dinner. Clients want to save money  
6     so they, you know, can save for their children's school, or  
7     things like that.

8     Q. Let's take the client that told you, on the other  
9     side, I take it --

10    A. Uh-huh.

11    Q. -- I just want to take my wife out to dinner.

12    A. Uh-huh.

13    Q. That's what this person told you?

14    A. Uh-huh.

15    Q. Tell the jury how you tied that in emotionally.

16    A. So, you know, your main goal is to lower -- lower your  
17    payments so you can save money each month and by doing  
18    this, you are going to be able to take your wife out to  
19    dinner; is that right?

20                   And they say yes.

21    Q. I see. Then it says, pitch the program, pitch  
22    program. What does that mean?

23    A. That's when I go ahead and tell them about the program  
24    that I have chosen for them.

25    Q. What do you say about it?

1     A. You know, I basically say, I have a great program  
2     here. Your new loan amount is going to be X amount of  
3     dollars based off -- you know, depends on what we were  
4     doing. Paying off your first mortgage and maybe paying  
5     off those credit cards.

6                     The program is, and I would tell them, you know,  
7     five-year ARM. Your new payment is going to be X amount of  
8     dollars per month and, you know, right off the bat, you  
9     know, you are going to be saving \$200 per month. The fees  
10    for this mortgage are X amount of dollars, and then your  
11    rate is whatever percentage rate it was.

12   Q. Would you present two programs or one program?

13   A. It kind of just depended on the client. I usually  
14    would have two ready just in case they were, like, oh, I  
15    didn't really want an ARM.

16                     So you're like, that's no problem. We also have  
17    this 30-year fixed, you know, and then I would go through  
18    that. But if they were really set just on one program, I  
19    would just usually put one down.

20   Q. When you were telling them all of the reasons they  
21    should do it, did you ever tell them, no, these are some  
22    reasons you maybe shouldn't be taking this loan? Did you  
23    ever do anything like that?

24   A. No.

25   Q. Why not?

1 A. Because it was sales, and we wanted them to initially  
2 say yes to the mortgage and sell them the mortgage.

3 Q. Were you even trained to learn all of the  
4 disadvantages of a particular sales or particular mortgage  
5 type?

6 || A. No.

7 Q. It says -- goes on to say, benefits, pivot with  
8 enthusiasm and emotion. What's that mean?

9 A. That means getting excited about the program with the  
10 client. So, like, if you are going to be able to save them  
11 \$200 a month, you are saying, saving you \$200 a month over  
12 the next 10 years is going to save you X amount of dollars.  
13 You know, get excited about it with them so they are  
14 getting, wow, this is great.

15 Q. And what does pivot mean?

16 A. Because you're pivoting away from the program and you  
17 are kind of pivoting into -- now you are pivoting into, you  
18 know, what you are going to save, what you are going to do.  
19 And then the service benefit, you will have these  
20 advantages of working with Quicken Loans. You are kind of  
21 pivoting to the close.

22 Q. Pivot just means, like, change course?

23 A. Kind of. You are kind of turning directions.

24 Q. It says, step seven, close, ARC five times.

25 What is pivot to sacrifice close mean?

1       A. Right now I'm pivoting to close. So, again, it's a  
2 lot of reading on my part. You know, I didn't  
3 vary -- deviate from this too far.

4                   Obviously, this loan makes a lot of sense --

5       Q. Read slowly.

6       A. Obviously, this loan makes a lot of sense and I'm  
7 excited to get it off your to-do list. At this point what  
8 we need to do is to get your loan into the system. First,  
9 what credit card do you want to put your deposit on, a  
10 Visa, MasterCard or check by phone?

11      Q. And what is the sacrifice close? Why is it a  
12 sacrifice close? Do you understand that?

13      A. The sacrifice close, I'm trying to close right here.  
14 And if I'm not closing, I'm going to keep -- basically, I'm  
15 going to, you know, acknowledge, respond, close. It says  
16 five times. I really never did it five times.

17      Q. Why didn't you do it five times? It says four times  
18 there, doesn't it? No, it does say five --

19      A. I didn't want to feel that pushy. I mean, I would do  
20 it a few times, but I didn't want to be, you know, that  
21 pushy with somebody.

22      Q. Give me an example of an ARC.

23      A. An ARC is, you know, that sounds great. I just want  
24 to think it over.

25                   And then I would just say, you know, while you're

1 thinking, I understand you might want to take some time to  
2 think this over but while you are thinking it over, rates  
3 are changing. So the best thing to do here is get this  
4 rate locked in tonight so you can go to bed knowing that  
5 the rate we talked about today is the rate you are going to  
6 close with.

7 So did you want to put that on your Visa or  
8 MasterCard?

9 Q. You'd come right back to Visa or MasterCard?

10 A. Uh-huh.

11 Q. Were there other ARC techniques that you remember?

12 A. As far as different people with different objections?

13 Q. Yes.

14 A. Yeah. I mean, you would get spousal objections. You  
15 could get rate objections. You could get closing cost  
16 objections, wanting to think about it objections.

17 Q. Were there any objections you weren't trained on?

18 A. No. I mean, it was pretty much the standard every  
19 time.

20 Q. Okay. This handling objections, was that something  
21 you came up with or was it through training?

22 A. No. That was through training and through Quicken  
23 Loans.

24 Q. What is trial close at the end there? What is that  
25 about?

1       A. The trial close is, if they really are not, you know,  
2 they keep objecting, keep objecting, keep objecting, so at  
3 that point, you know, you say, well, I understand it's  
4 obvious you can't commit tonight, so what we are going to  
5 do is just give you a little bit of time to think about it.

6               And then I would just, kind of, set a time for  
7 them to follow up with them and say, you know, I will call  
8 you tomorrow and then we can go forward from there.

9       Q. Okay. Would you set up a specific time?

10      A. Yes.

11      Q. Then step ten is foreshadow future business. What is  
12 that about?

13      A. Kind of telling them, you know, you are excited to be  
14 working with them, and then this is kind of where you are  
15 asking for referrals. And you are asking, you know, who do  
16 you know that I could help with a mortgage? Your friend,  
17 family, that sort of thing.

18      Q. Now, after you take -- let's just say on this example  
19 you did take the application.

20      A. Okay.

21      Q. Tell the jury what you do next.

22      A. From the application that I would gather, it's all  
23 handwritten that you are writing everything out. So then  
24 you enter it into a software called Lakewood. And Lakewood  
25 is where the loan pretty much sits within Quicken to say,

1 yes, this has been approved, yes, their, you know, jobs  
2 check out, this is their history, yes, they make this much,  
3 that sort of thing. It's, you know, basically the system  
4 where the loan is after you get into LOLA.

5 Q. In Lakewood, how long would it take you to enter the  
6 information from LOLA into Lakewood?

7 A. At first it took a while, when you first start. It  
8 could take, you know, up to an hour to get everything. And  
9 then after a while, you could get it done in, probably, you  
10 know, maybe 15 minutes, 20 minutes.

11 Q. In Lakewood do you know what the term "green bar" is?

12 A. Yes.

13 Q. Would you tell the jury what the green bar is in  
14 Lakewood?

15 A. Green bar in Lakewood is an actual figure and it's  
16 highlighted green to represent the green bar. And that's  
17 when there is an overage in the loan. So if that means  
18 there is more money somewhere than necessary, that's where  
19 the overage comes from.

20 Q. Have you ever heard the term "raise the green bar?"

21 A. Yes.

22 Q. Tell the jury what raise the green bar means.

23 A. Raise the green bar means when -- there was ways in  
24 the Lakewood system where you are moving fees around and  
25 the green bar is growing.

1 Q. Do you know if you, or anyone else, was trained to  
2 raise the green bar?

3 A. I wasn't very good at it.

4 Q. Do you know if other people were?

5 A. Yeah.

6 Q. How can you raise the green bar?

7 A. By bogus fees and by increasing, you know, just  
8 different costs associated with the loan, putting them in  
9 there so if they were only supposed to be, you know, maybe  
10 there were \$500, you make it \$600, that's obviously an  
11 overage, that sort of thing.

12 Q. What's an overage, are there other ways beside putting  
13 in fees?

14 A. Yeah. If the rates change and maybe you have said,  
15 you know, well your rate is going to be the 6 percent but  
16 then the market fluctuates, maybe the market went down and  
17 now the rate's at, you know, 5.875. If you stay at 6  
18 percent, then there would be a green bar in the loan.

19 Q. So would you call that yield spread? What do you call  
20 that, the rate is different from what the rate in the  
21 computer is?

22 A. There is just different points associated with it. I  
23 don't remember the exact term.

24 Q. What is the highest green bar you ever had on any of  
25 your files?

1     A. That I ever had? That I can remember, I mean,  
2     probably only a couple hundred dollars. Like I said, I  
3     wasn't really good at it. I don't really remember.

4     Q. What's the highest one you saw?

5     A. Probably a couple thousand, at least.

6     Q. Have you heard the term "pushing the bruise?"

7     A. Yes.

8     Q. What does pushing the bruise mean to you?

9     A. Pushing the bruise means to me, when there would be a  
10    client that, you know, maybe has a bad situation but we can  
11    still help them and it's constantly, like, reminding them  
12    of this bad situation to kind of, you know, you are pushing  
13    on that bruise, like, I know you -- you have a bad credit  
14    score, but, you know, we are actually able to get you into  
15    this loan even though you have this bad credit score. Keep  
16    bringing up that you are able to help them even though they  
17    have the bad problem.

18    Q. What's the point of pushing the bruise?

19    A. It's, you know, it's kind of letting them know, like,  
20    they are not going to be able to go anywhere else and we  
21    are helping them, even though they have this, you know, so  
22    to speak, problem.

23    Q. Have you heard of the loan tracker program at Quicken?

24    A. I have heard the phrase, yes.

25    Q. How is the phrase used?

1     A. The phrase is used, you know, we have a loan tracker  
2     program that we will be tracking your loan over the life of  
3     it, to clients.

4     Q. Is this something you told clients?

5     A. Yes.

6     Q. Do you know if there was such a program?

7     A. No.

8     Q. You're saying you don't know or --

9     A. I don't know.

10    Q. Have you ever seen it?

11    A. No.

12    Q. What was the point of telling the client that there  
13    was a loan tracker program?

14    A. So they were comfortable, you know, making a move with  
15    your company, just, you know, while they might say, you  
16    know, well, that rate seems a little high.

17                    Well, I understand that the rate seems high.

18    This is what you qualify for. So we do have a loan tracker  
19    program. So if rates are going to shift and we can get you  
20    into something better, I'm going to be the first one to  
21    call you.

22    Q. But no one ever sent you something to call somebody --

23    A. No.

24    Q. -- in your year and a month, or so, there?

25    A. Uh-uh.

1 Q. I want to shift gears on you a little bit and talk  
2 about whether or not you know you were being monitored at  
3 Quicken.

4 A. Okay. I definitely think that I was monitored.

5 Q. How do you know you were monitored?

6 A. Because the number of dials that you made were  
7 monitored by the bridge. You could actually see them right  
8 there on your computer screen. They were all tracked and  
9 calls you made were recorded.

10 Q. Were any of your calls recorded?

11 A. Yes.

12 Q. How were they used when they were recorded?

13 A. They can be used in a number of ways. But one of the  
14 ways was in, like, a call, I guess a team call clip, where  
15 you team goes down to a room and they can play any call  
16 they want, like, over a speaker and everyone, kind of, sits  
17 there and critiques it.

18 Q. Were some of yours critiqued?

19 A. A couple of times, yes.

20 Q. Give me the example of what was wrong with your call?

21 A. Just instances of, you know, different areas to close,  
22 and that sort of thing.

23 Q. Different areas where you could close?

24 A. Where I could have closed or what I could have done.

25 That sort of thing. It was just critiquing the entire call

1      itself.

2      Q.    When you say close, you mean --

3      A.    Close the clients.

4      Q.    Get the --

5      A.    Get the deposit.

6      Q.    Get the \$400?

7      A.    Yeah, get their commitment to do business.

8      Q.    Can you tell the jury what the layout of the floor  
9           looked like?

10     A.    The layout of the floor was a mass sea of cubicles.

11     And they were cubicles that were only, you know, yea high.

12     So you saw your neighbor. It was, you know, a lot of  
13     people, you know, around their desk. Some people stood up  
14     to sell, some people were, you know, sitting down and a lot  
15     of people, you know, were throwing footballs around. It  
16     was just, you know, you had your headphones on and dials  
17     and, you know, people had their music going, but it was  
18     just a mass sea of people.

19     Q.    Do you know what the bridge is?

20     A.    Yes.

21     Q.    Tell the jury what the bridge is.

22     A.    The bridge was in the center of the sales floor and  
23     the bridge is where they kept track of all of our numbers,  
24     how many dials you had, how much talk time you had, you  
25     know, what teams were doing different things.

1 Q. Do you know if Quicken kept track of your hours  
2 worked?

3 A. No.

4 Q. Did they ever provide you with a record of the hours  
5 you worked?

6 A. No.

7 Q. Was there pressure for you to work more than 40 hours?

8 A. Yes.

9 Q. Tell the jury the pressure you felt.

10 A. If you didn't work, you know, at least more than 40  
11 hours, you would get, you know, called a part timer, or  
12 your chair was spinning, is what they would say if they  
13 thought you were leaving too early. But it was mostly  
14 pressure from your team to stay late.

15 Our team's phrase was "the vault is open late."  
16 And it was, you know, you are not a team player if you are  
17 not staying late with everybody, and, you know, pitching in  
18 and doing your part to hit the team sales goal.

19 Q. What if you had met your goal?

20 A. It didn't matter. You still needed to be a team  
21 player.

22 Q. How much overtime do you estimate you worked while you  
23 were there?

24 A. I estimate that I worked roughly 60 hours a week.

25 Q. Were there weeks when you worked more than that or

1 less than that?

2 A. Yes.

3 Q. Both?

4 A. Yes.

5 Q. Can you tell us what a typical workweek looked like?

6 A. Sure. A typical workweek, I would get there, roughly,  
7 9:00 and I would be working until 8:00, and that would be,  
8 you know, typically Monday through Friday. Then I would  
9 work on the weekend, either a Saturday or a Sunday,  
10 sometimes for a five-hour shift.

11 Q. Did you work from home?

12 A. I did. I was set up to work from home, and I would  
13 take calls on my personal cell phone.

14 Q. Were you ever paged from work or called from work?

15 A. It was set up that our team leader wanted any  
16 voicemail that went to your voice mailbox at work that you  
17 didn't respond to X amount of time, it was automatically  
18 set up to be sent to your cell phone. So if I got a  
19 voicemail on the weekend, it would automatically ring my  
20 cell phone to tell me I had a voicemail at work.

21 Q. Do you remember getting any of those calls at home?

22 A. Yes.

23 Q. Tell time the jury about those.

24 A. I would get calls at 5:00 in the morning from my sales  
25 team leader trying to do a, you know, motivational phone

1 call to pump us up for the day. It would be, you know,  
2 5:00 a.m. and ringing my cell phone while I'm sleeping.

3 Q. Do you remember other calls like that?

4 A. There were a few of those.

5 Q. The people around you, did they work similar hours to  
6 you?

7 A. The people on my team worked similar hours to me. It  
8 just depended what time zone you were covering to when you  
9 would actually start your shift, to when you would end your  
10 shift.

11 Q. When you left at night, were there still people there?

12 A. Yes.

13 Q. When you got in in the morning, were there people  
14 there?

15 A. Yes.

16 Q. Did Quicken ever tell you you were entitled to get  
17 overtime?

18 A. No.

19 Q. Do you know if your manager ever instructed you on how  
20 to deal with the call live?

21 A. I need clarification on that.

22 Q. Did your manager ever come over and plug into your  
23 system?

24 A. Yes.

25 Q. While you were on the phone?

1       A. Yes.

2       Q. What would happen?

3       A. I mean, personally, just made me nervous. But he  
4       would listen in and tell me, you know, close, or ARC, or,  
5       you know, they would try to be motivational sales coach  
6       right there on the spot, you know, what is happening in  
7       your call.

8       Q. Do you know if that person knew one single thing about  
9       the financial circumstances of the person on the phone?

10      A. No.

11      Q. No, they did not?

12      A. I don't know. They were just walking around plugging  
13       into whoever was on a call and pitching somebody or talking  
14       to a client.

15      Q. Okay. How were you motivated to the job there at  
16       Quicken?

17      A. Motivated? I mean, by money. I mean, the more you  
18       sell the more money you make.

19      Q. Were there sales contests, things like that?

20      A. Uh-huh.

21      Q. Tell us about those.

22      A. There were sales blitzes where they would say, you  
23       know, today is going to be a sales blitz and we are going  
24       to work extra long today and we are going to have call  
25       blocks and contests and, you know, games and prizes, and

1      that sort of thing. And it was just an all-intensive to  
2      generate more sales. They would, you know, have different  
3      things going on a different day, and ringing bells, and  
4      everything, but it's just basically a day of sales.

5      Q.     Did you win any trips?

6      A.     I did win a trip to the Atlantis.

7      Q.     What is that?

8      A.     A hotel in the Bahamas.

9      Q.     Why did you win that trip?

10     A.     The contest was based on getting deals, which meant  
11     actually getting a client, you know, committing to the  
12     loan, giving you the deposit and getting information to  
13     Lakewood and getting folders back. So that means, not only  
14     did I get the deals into Lakewood during a certain amount  
15     of time, X amount of deals you had to sell, I also got the  
16     documents needed back. Maybe they needed their W-2s, or  
17     their bank statements, or things like that. But I got  
18     everything I needed to add to a certain number of points, I  
19     got to go -- I mean, there was other people, that I did get  
20     participate in that.

21     Q.     Was your job performance heavily criticized?

22     A.     Yes.

23     Q.     What was wrong with your job performance?

24     A.     Just the lack of sales at some point if I wasn't at  
25     the number they wanted me to be at.

1 Q. Tell us what the criticism was of your job.

2 A. Basically selling more loans, get more deals.

3 Q. Who?

4 A. This was done by my team leader, Matt Zontini.

5 Q. Was the job stressful?

6 A. Yes.

7 Q. Why was it stressful?

8 A. Because you're, you know, under pressure all day,  
9 every day to, you know, make these sales, to get people on  
10 the phone, to get their Social Security number, to pull  
11 their credit, to get them qualified for a loan, to pitch  
12 them the program, to get them to say yes. And you need  
13 them to say yes because, you know, you are being counted on  
14 by your team to hit a certain number and your team, you  
15 know, your team leader is trying to motivate everybody.  
16 Everybody wants, you know, to get to a certain number of  
17 deals. So it's pretty high volume. It's high stress.

18 Q. Was there a point where you became kind of  
19 discouraged?

20 A. Yes.

21 Q. Can you tell the jury what happened?

22 A. There -- there was a point I was going to go in on a  
23 weekend. I had to go in on a Saturday or a Sunday. I  
24 chose, you know, to go in on a Sunday afternoon. And the  
25 Sunday afternoon rolled around, and I'd gotten a call from

2/8/11

95

1       my family, I think it was from my aunt. It said, your  
2       grandmother is in the hospital and the do-not-resuscitate  
3       papers have been signed. So we want everyone to come up  
4       here and be with her.

5                   So I said, that's fine.

6                   I called my team leader at the time and I left  
7        him a voicemail on his work voicemail. And I said, you  
8        know, I'm really sorry. I can't come in this afternoon. I  
9        have to go to the hospital. I explained the situation. I  
10      said, I'm going up to the hospital with my family. That's  
11      where I'll be all night. I won't have time to come into  
12      work tonight before I'm going to be there tomorrow.

13                  So, you know, I go to the hospital. I left the  
14      hospital that night. Went home, went to work in the  
15      morning.

16                  My team leader at the time sat right across the  
17      wall from me. Instead of just saying something to me  
18      personally, he left me a -- I believe it was a voicemail,  
19      or an e-mail, and I can't really remember which it was, but  
20      it wasn't a personal message. It just basically said, you  
21      need to work your extra hours. I'm sorry, I don't really  
22      care, you have to work your extra hours. You need to be a  
23      team player.

24                  And I said, no, I'm not. I'm going to see my  
25      Grandma, tonight, sorry.

1 Q. Did your team leader understand the do-not-resuscitate  
2 papers had been signed?

3 A. Yeah. It didn't matter. There was sales goals.

4 MR. NICHOLS: No further questions, Your Honor.

5 THE COURT: Thank you very much, Mr. Nichols.

8 MR. MAYER MORGANROTH: Thank you, Your Honor.

## CROSS-EXAMINATION

10 || BY MR. MAYER MORGANROTH:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. You testified as to when you first began to work at  
14 Quicken. When was that?

15 A. T started in July of 2005.

16 || 0. And what were you, 23 years old, then?

17 A. Yes.

18 Q. And you left in August of '06?

19 A. Yes.

Q. You spent about 11 months actually working?

21 A. Well, I would say 13, from July to August.

22 Q. I see. I was excluding, as you testified, you did  
23 about 11 months worth of work, after you started, you  
24 trained for?

25 || A. Okay.

1 Q. Is that correct?

2 A. I believe training was only a four-week program. So,  
3 I would say, I was on the sales floor for, roughly, a year.

4 Q. And you actually resigned, did you not?

5 A. I did.

6 Q. When you resigned, you specifically left; is that  
7 correct? In other words, you left fully working there?

8 A. Yes.

9 Q. You never came back?

10 A. No, I did not.

11 Q. Prior to working at Quicken, where did you work?

12 A. I was an intern, also known as a client associate, at  
13 Merrill Lynch.

14 Q. How long did you work there?

15 A. I worked there a little over -- maybe a year. I don't  
16 really remember exact dates on that. I remember I was in  
17 college and it was the last couple years of college.

18 Q. Where did you work after that?

19 A. I also worked at an Irish pub during the meantime, if  
20 that's what you are referring to.

21 Q. I'm not referring, I'm asking.

22 A. I worked at an Irish pub, and I interned before that,  
23 and then I worked at Quicken.

24 Q. How long did you work at the Irish pub?

25 A. Maybe about a year and a half, two years as well.

1 Q. And did you work at a grill and bar other than that,  
2 too?

3 A. I worked at Chili's Grill and Bar, yes.

4 Q. How long did you work there?

5 A. I worked there for a while. I worked there from --  
6 off and on from 2000. I transferred stores when I moved a  
7 couple times.

8 Q. And since you left Quicken, have you worked?

9 A. Yes.

10 Q. Where did you work after Quicken?

11 A. I worked at Paychecks.

12 Q. When did you start working there?

13 A. Immediately following my exit at Quicken.

14 Q. What is your job function there?

15 A. I am a sales representative.

16 Q. At Paychecks?

17 A. Yes.

18 Q. Now, when you were first interviewed at Quicken Loans,  
19 you testified before you were interviewed, was the  
20 compensation package explained to you?

21 A. Yes, it was.

22 Q. Who explained it to you?

23 A. I don't remember who explained the compensation  
24 package to me. I believe it was the recruiter.

25 Q. And you recall that you were informed that your

1      position was a salary position without overtime pay; is  
2      that correct?

3      A.    Yes.

4      Q.    You recall signing a compensation claim?

5      A.    Yes.

6      Q.    You recall that particular plan stated that you were  
7      paid a biweekly salary?

8      A.    Yes.

9      Q.    Do you also recall that in that compensation plan, it  
10     stated that you had certain discretion and independent  
11     judgment?

12     A.    I don't remember the exact details of that.

13     Q.    Do you recall whether or not you were allowed to set  
14     premiums?

15     A.    And by premiums, you mean?

16     Q.    Do you know what premiums are, according to the  
17     agreement?

18     A.    No.

19     Q.    Were you allowed to make additional adjustments in  
20     monthly commission amounts; do you recall is that?

21     A.    The only adjustments were made by the green bar.

22     Q.    Did you make the recommendations for adjustments?

23     A.    Did I make -- did I get -- did I receive them?

24     Q.    Did you make recommendations for adjustments?

25     A.    I apologize, I don't understand your question.

1 Q. Do you recall that the agreement specifically  
2 stated --

3 A. Did I ask to adjust the agreement? No, I didn't ask  
4 to adjust the agreement.

5 Q. No.

6 A. At that point I didn't know what the specifications of  
7 the green bar were.

8 Q. I'm showing you Exhibit D2. Do you recall this is the  
9 compensation plan --

10 A. Uh-huh.

11 Q. -- that you entered into when you joined Quicken?

12 A. Yes.

13 THE COURT: Any objection to that, Mr. Nichols?

14 MR. NICHOLS: Just a second, Your Honor.

15 THE COURT: D2 is the compensation plan.

16 MR. NICHOLS: Yes, I do, Your Honor. I object.

17 THE COURT: What is your objection?

18 MR. NICHOLS: It's not signed by her. It's not  
19 hers.

20 THE COURT: Give me a little more foundation.

21 It's certainly relevant. I'm not familiar exactly with D2.

22 Go ahead, Mr. Morganroth.

23 MR. MAYER MORGANROTH: Yes, Your Honor, if I may  
24 address it to the Court.

25 MR. NICHOLS: Your Honor, I'll withdraw the

1       objection.

2                   THE COURT: D2 is received. And you may proceed,  
3 Mr. Morganroth?

4                   (Exhibit D2 was received)

5                   MR. MAYER MORGANROTH: Thank you, Your Honor.

6 BY MR. MAYER MORGANROTH:

7 Q. On page 2 do you see particular paragraph A, which is  
8 mortgage bankers, senior mortgage banker, executive  
9 mortgage banker, job responsibilities and destinations?

10 A. Yes.

11 Q. Now, you see there where this agreement you signed  
12 states that your primary job responsibilities included the  
13 following. Do you see that?

14 A. I do. These were to ultimately make the sale of the  
15 loan.

16 Q. Where does it say that?

17 A. It doesn't say this but --

18 Q. Let's stick with what I ask you.

19                   By the way, did you prepare for your testimony  
20 today?

21 A. By how, I mean --

22 Q. In any way.

23 A. Did I prepare myself?

24 Q. Did you look at any agreements, any documents, any  
25 papers?

1      A. I have in the past, yes.

2      Q. Did you look at your agreement?

3      A. No.

4      Q. So you haven't examined your compensation plan  
5      agreement preparing for trial?

6      A. No.

7      Q. When was the last time you looked at it?

8      A. I would say the last time that I have seen this,  
9      probably, when I worked there.

10     Q. As you see the particular duties, do you see that you  
11     interview potential loan applicants to determine their  
12     goals and needs and collect pertinent financial  
13     information?

14     A. Yes, I see that was to ultimately gain the business.

15     Q. You keep saying, to gain the business. Did I ask you  
16     that?

17     A. No.

18     Q. You keep adding something to my question. Did I ask  
19     you whether it was to gain business?

20     A. No.

21     Q. Did somebody tell you to keep saying that?

22     A. No. I'm just saying that.

23     Q. Again, you did interview the potential loan applicant  
24     to determine the goals and needs and collect pertinent  
25     financial information; is that correct?

1     A. That is correct.

2     Q. The next one is, analyzing potential loan applicant's  
3 financial situations, analyzing and advising the client on  
4 advantages and disadvantages of various loan programs,  
5 determining which loan programs meet their needs,  
6 determining what they need to do to qualify for certain  
7 loan programs and counseling them accordingly.

8                     Did you do that?

9     A. I did not do the disadvantages. I advised of the  
10 advantages of the loan programs based on what they wanted.

11    Q. Do you know what PMI is?

12    A. Yes.

13    Q. What is that?

14    A. Private mortgage insurance.

15    Q. A client sometimes needs that private mortgage  
16 insurance?

17    A. Yes.

18    Q. Was it costly?

19    A. Just depended on the loan size.

20    Q. Were there ways of avoiding that that you could  
21 suggest to the client?

22    A. If they qualified.

23    Q. What were the ways you could avoid it?

24    A. Splitting the loan.

25    Q. How would you split the loan?

1      A. 80 percent on one loan and the remainder on the other  
2      loan.

3      Q. What's the other loan?

4      A. The second loan.

5      Q. Was that the HELOC?

6      A. It just depended on what they qualified for.

7      Q. Could it be a piggyback?

8      A. That was a term that was used, yes.

9      Q. What is piggyback?

10     A. A loan that was a second mortgage. I don't remember  
11     exactly. I just remember hearing the phrase.

12     Q. What does the phrase HELOC mean?

13     A. Home Equity Line of Credit.

14     Q. You could do that and you would recommend that in  
15     order to avoid private mortgage insurance; is that correct?

16     A. Only if they qualified for it.

17     Q. Well, if they didn't qualify for it, they wouldn't get  
18     it, would they?

19     A. No.

20     Q. But you would recommend it, would you not?

21     A. Yes.

22     Q. Now, the next one says, marketing and promoting the  
23     company's loan products and services. You did that; is  
24     that correct?

25     A. I personally didn't do any marketing, no.

1 Q. There was a separate marketing ARM, wasn't there? Did  
2 you know there was a marketing ARM at Quicken?

3 A. I knew there was a staff that came up with the new  
4 marketing ideas, the web page, et cetera.

5 Q. You knew that the mortgage bankers didn't do the  
6 marketing, it was a separate marketing group; is that  
7 correct?

8 A. Yes.

9 Q. And actually when you got the particular leads you are  
10 talking about, they came from another division called front  
11 line; is that correct?

12 A. No.

13 Q. Where did they come from, marketing?

14 A. No. They came from the websites LowerMyBills or  
15 Bankrate.

16 Front line was the team that caught the inbound  
17 leads, meaning something called directly to Quicken.

18 Q. And you would get the lead --

19 A. I rarely got front line leads. I would get a lot of  
20 leads from the LowerMyBills or Bankrate.

21 Q. But people on the team and mortgage bankers got front  
22 line leads, did they not?

23 A. People could get leads from front line.

24 Q. Now, the next thing is, have a thorough understanding  
25 of the company's mortgage loan programs and those of its

1      competitors. Is that correct?

2      A. I don't believe that is correct. We would have the  
3      matrix with the company's mortgage loan programs, but I  
4      didn't have any information on competitors, just what, you  
5      know, we had in front of me. We didn't have a thorough  
6      understanding on what our competition was doing.

7      Q. So you had a thorough understanding, though, of your  
8      own loan programs; is that correct?

9      A. We would have a matrix of what would give us the  
10     information needed, so the information was available to us  
11     for the loan.

12     Q. Were there a hundred of variations of different types  
13     of loans?

14     A. I don't remember exactly how many loans or at specific  
15     times.

16     Q. The next one is. Working with loan applicants to  
17     complete the loan application process and correct the  
18     necessary documentation -- on the home buying and mortgage  
19     loan processes. Advising the client on various loan  
20     pricing options with respect to loan programs that meet  
21     their needs and unfolding/locking their interest rate,  
22     communicating the approval status of the loan to the client  
23     and advising the client with respect to conditions.

24                   Did you do that?

25     A. I did this to, ultimately, you know, gain their

1 business.

2 Q. So, I guess the answer is yes, you did that; is that  
3 the answer to my question?

4 A. Yes, I did that to gain their business.

5 Q. Next one is working with loan applicants, company  
6 staff and others to resolve various issues that arise  
7 between loan application and closing and on various post  
8 closing matters.

9 Did you do that?

10 A. Yes.

11 Q. Next one is, understanding the relevant financial  
12 market interest rate environments and managing the  
13 monitoring rate locks.

14 Did you do that?

15 A. No. We didn't have to, you know, watch the financial  
16 market ourselves. We would get updates sent up. We didn't  
17 have to go and do any research on my own time or in my own  
18 speculation or learning about the market on my own. It was  
19 just, kind of, giving it to us in a summarization. It  
20 wasn't so much understanding as just knowing the  
21 information that you needed to know for, you know,  
22 ultimately, you know, doing your job and selling the  
23 mortgage.

24 Q. Weren't there several different publications that you  
25 were to keep abreast of in order to know what the current

1      condition was?

2      A.    No.

3      Q.    The next one is, understanding and applying the legal  
4      compliance rules associated with mortgage lending and  
5      utilizing the various technologies associated with the  
6      position.

7                  Did you do that?

8      A.    Yes.

9      Q.    In fact, many states, you are required to take tests,  
10     weren't you?

11     A.    Yes, you were required to carry licenses.

12     Q.    On the first typed page, page 2 of 18, do you see  
13     where it says, second paragraph, under introduction?

14     A.    Uh-huh.

15     Q.    It says, mortgage bankers are paid biweekly salary.  
16     In addition, they are eligible for monthly commissions,  
17     where applicable. The monthly commission amount (as  
18     described below) commission rate, commission structure,  
19     eligibility for commissions and classifications are  
20     computed in the manner set forth in this plan and are  
21     subject to adjustments and reductions based upon the rules  
22     set forth in this plan and are based upon mortgage bankers  
23     strict adherence to the rules set forth in this plan.

24                  Now, when you saw that particular paragraph and  
25     you also discussed the particular agreements, you

1 understood that you had a biweekly salary and commissions;  
2 is that correct?

3 A. That is correct.

4 (Brief pause)

7 MR. MAYER MORGANROTH: Not yet, Your Honor.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Very good. Go ahead, Mr. Morganroth.

17 | BY MR. MAYER MORGANROTH:

18 Q. Page 14, I see the Quicken Loans fair lending policy,  
19 is a chart of mortgage bankers commission structure.

20 Do you see that?

21 || A. Yes.

22 Q. Did you have any training on the fair lending policy?

23 A. I don't remember, that I recall.

24 Q. Do you recall that you had to have training and pass  
25 certain tests on it in order to get licensed in other

1 states?

2 A. I do recall passing certain tests to get licenses in  
3 other states.

4 Q. You see the next paragraph is equal opportunity  
5 lender?

6 A. Yes.

7 Q. Did you understand that --

8 A. Yes.

9 Q. -- paragraph when you executed your agreement?

10 A. Yes.

11 Q. Do you see the paragraph, equal treatment of clients,  
12 nondiscrimination?

13 A. I do see that.

14 Q. You were talking about the fact that you were  
15 monitored; do you recall that?

16 A. Yes.

17 Q. Do you see paragraph five, that you agreed to be  
18 monitored and also as to ensure fair lending objectives to  
19 be achieved.

20 Do you see that?

21 A. I do see that, however, the factual issues with the  
22 sales team, it was to help sales objections and --

23 Q. I take it your answer was, yes, you see it?

24 A. Yes, I do, however --

25 Q. Has anybody instructed you always at the end of every

1        answer to add sales to do it?

2        A.    No.

3        Q.    Why do you do that?

4        A.    Because that's how I see that.

5        Q.    That's not the question.   Was that the question I  
6        asked you?

7        A.    No, that was not the question.

8        Q.    Now, look further, you will see fiduciary care,  
9        fiduciary duty, extraordinary care.

10            Do you see that?

11        A.    I do see that.

12        Q.    Did you understand that you were in a special position  
13        of trust and confidence and fidelity with Quicken Loans and  
14        also with their clients?

15        A.    I see that, yes.

16        Q.    Next paragraph --

17            THE COURT:   Mr. Morganroth, I do regret and  
18        apologize for interrupting you but we are getting near the  
19        end of the day, so let me give you the high sign and get  
20        another broad area out of the way and when you are  
21        finished, we will call it a day.

22            MR. MAYER MORGANROTH:   Thank you, Your Honor.

23            THE COURT:   You're welcome.

24        BY MR. MAYER MORGANROTH:

25        Q.    The next paragraph, page 15, when you read this

1 agreement, you understood you had a duty to exercise  
2 extraordinary care? Did you understand that?

3 A. I'm just reading through it. Yes.

4 Q. And did you see in the next paragraph, special duties  
5 and fiduciary responsibilities as a Quicken Loans mortgage  
6 banker regarding access to client financial information?

7 A. Do I see that? Yes --

8 Q. Yes.

9 A. -- I do see that.

10 Q. The next paragraph, do you see the paragraph about  
11 fraud?

12 A. Yes, I see the paragraph.

13 Q. And did you also see, aside from not engaging in  
14 fraud, that you were to see to it that it wasn't engaged in  
15 in any particular way; is that correct?

16 A. I'm sorry, where are you at?

17 Q. The first line of defense against fraud. Do you see  
18 where you were the first line of defense?

19 A. Yes.

20 Q. Would you go to the technology page, please?

21 THE COURT: Why don't we break for the day there,  
22 sir.

23 MR. MAYER MORGANROTH: That's fine, Your Honor.  
24 This is just the last --

25 THE COURT: Last thing, I'm sorry, go ahead.

1                   MR. MAYER MORGANROTH: Thank you, Your Honor.

2 BY MR. MAYER MORGANROTH:

3 Q. You see on page 18. Do you see the particular  
4 paragraph, in the third sentence, second and third line, I  
5 understand and agree that this plan sets forth the terms of  
6 my job responsibilities as an exempt employee.

7                   Do you see that?

8 A. I do see that.

9 Q. You understood you were exempt from overtime, did you  
10 not?

11 A. I didn't understand what exempt meant at that point.

12 Q. You didn't know what it meant?

13 A. No.

14 Q. You signed the agreement without knowing what it  
15 meant?

16 A. I did.

17 Q. In your training and studies about the law in  
18 respective states, did you see where it said that anybody  
19 that signs an agreement is understood under the law to  
20 understand they are signing and have read it?

21 A. Yes.

22 Q. When did you find out what "exempt" meant?

23 A. While I was working there.

24 Q. How long after you were working there did you  
25 understand?

1     A. Probably, I don't know, six months or so, I learned  
2 what exempt many versus nonexempt.

3     Q. Up until then, you were not receiving overtime, were  
4 you?

5     A. No.

6     Q. You never complained about not receiving overtime, did  
7 you?

8     A. No.

9     Q. After you say you understood what exempt meant, you  
10 didn't write any complaint about not receiving overtime,  
11 did you?

12    A. I didn't know who to complain to. It was just a given  
13 that we were working overtime.

14    Q. You had a team leader?

15    A. I did.

16    Q. And above the team leader there were other officers in  
17 the company?

18    A. Correct.

19    Q. And you didn't know who to complain to about anything?

20    A. It was pretty much a given that you were working late  
21 and you were working overtime.

22    Q. And you knew that you had signed an agreement at that  
23 point that said you were exempt from overtime, didn't you?

24    A. Correct.

25                    MR. MAYER MORGANROTH: I have nothing further at

1       this time, Your Honor.

2                   THE COURT: Thank you very much. Ms. Tittensor,  
3 you may step down.

4                   Ladies and gentlemen, we are at the end of our  
5 first day at trial. I must say it has been a highly  
6 productive and very good day, and I want to thank you for  
7 your attention and thank you, as always, for your service.  
8 Drive home safely tonight. Okay. Tomorrow morning, be  
9 here at 8:30, go up to the fifth floor. Check in. Come  
10 down here and my staff will let you in.

11                  In the meantime, don't talk about the case. Talk  
12 about your experience in Federal Court, do whatever you  
13 want to but don't discuss the merits, the testimony, or any  
14 of that with your loved ones, among yourselves or anybody  
15 else. Have a pleasant evening.

16                  All rise for the jury.

17                  Michael, if you'll lead them out, we'll conclude  
18 day one. Thank you very much.

19                  (Jury out at 5:02 p.m.)

20                  THE COURT: Everybody else may be seated. Great  
21 job, lawyers. Great day.

22                  Mr. Morganroth, what can I do for you? Go ahead.

23                  MR. MAYER MORGANROTH: The problem is that these  
24 people all signed agreements but in the page limits that we  
25 have, we don't have an exhibit for every single one. So

2/8/11

116

1       what we are using is the --

2           THE COURT: That's all right.

3           MR. MAYER MORGANROTH: -- have to somehow bring  
4       that forth to the jury --

5           THE COURT: I think I issued an order yesterday,  
6       or today, that said if you can agree on additional  
7       exhibits, I'm not going to hamstring you on that. If you  
8       need to go over the exhibit page limit by getting in  
9       relevant documents, such as this one for this witness,  
10      that's no problem at all. I think it's highly appropriate  
11      and I don't think the defense will have a problem.

12        MR. LUKAS: Your Honor, I would like to make a  
13        record and ask for a curative instruction based on their  
14        opening statement. When would you like me to do that?

15        THE COURT: Go ahead. First of all, anything  
16        else you want to say about the exhibits? I think they were  
17        handled quite nicely today.

18        MR. LUKAS: That's fine. There is a  
19        miscommunication between us and Mr. Nichols when he  
20        objected. That's pretty much what we agreed on, as long as  
21        they are looking at the right time frame. I don't want  
22        them looking at an agreement that was back in 2003 when  
23        they only worked there in '06. I think we can handle that.

24        THE COURT: Good. We got the testimony from the  
25        witness that this was not hers but it reflected her

1        obligations and understandings, and Mr. Morganroth  
2 effectively committed her to those paragraphs in the  
3 agreement. So I think we are set on that.

4                    What's the issue with the opening statement?

5                    MR. LUKAS: Your Honor, we believe that -- or I  
6 believe the opening statement was improper in a number of  
7 ways, including the exhibits. Mr. Morganroth made comment,  
8 these are just a couple random exhibits, or random e-mails,  
9 they pulled out of nowhere, knowing we are hamstrung with  
10 the 200. I can pull out 75, 100, 150 e-mails that say  
11 sales on every manager in the darn case. And he was able  
12 to tell -- I'm worried that they are -- I think his opening  
13 statement highlighted some very improper things that are  
14 going to go on in this trial. That's one of them.

15                  A second is to suggest that we solicited -- the  
16 lawyers solicited people to a lawsuit. As you remember,  
17 the Court sent judicial notice on this lawsuit. And to the  
18 extent we spoke to any people prior to that, it's  
19 attorney-client privilege, work product and protected  
20 advertisement to the extent he did it.

21                  THE COURT: I thought he said there were meetings  
22 between counsel and prospective plaintiffs. I don't know  
23 anything about that.

24                  MR. LUKAS: He is going to get into that, your  
25 Honor, and that's improper, and it was improper to say to

1       the jury. He's also implied to the jury that employees  
2 can --

3           THE COURT: Why is it improper to say that you  
4 interviewed folks prior to filing suit?

5           MR. LUKAS: He said we solicited people for this  
6 lawsuit. Your Honor sent judicial notice to people in this  
7 lawsuit. He said we had seminars. We had no seminars.

8           THE COURT: Did you?

9           MR. LUKAS: We did not have seminars.

10          THE COURT: I don't know.

11          MR. LUKAS: How are we going to defend ourselves?

12          THE COURT: It's an opening statement. It's his  
13 view on what the evidence was. So if you want a curative  
14 instruction on something you think is not proven, I will be  
15 glad to do that at the end of the case, but I think we have  
16 to see how things go.

17          What is your second point?

18          MR. LUKAS: My second point, Your Honor, is that  
19 he made comments regarding that employees can waive FLSA  
20 rights by agreement. He has put these agreements in front  
21 of these people, you knew you were exempt. You knew you  
22 weren't getting paid overtime. It's irrelevant. It has  
23 nothing to do with nothing. The issue is whether or not  
24 the people had work duties so that they could be paid  
25 overtime under the law. He is going to cross-examine every

1 person with a document that says, you knew you didn't get  
2 overtime. Of course, they knew they didn't get overtime.  
3 It's irrelevant for purposes of this lawsuit and they are  
4 going to run with that over and over again. It's improper.

5 THE COURT: I don't know if that's irrelevant.

6 The fact of the matter is that they signed agreements that  
7 asserted that they were not going to accept overtime pay.

8 Now, if that agreement was made in violation of  
9 federal law, then we will instruct the jury as to what the  
10 federal law is at the end of the suit, and you can argue  
11 that this is a red herring, or irrelevant. But I certainly  
12 think that in terms of bias, in terms of credibility, and  
13 in terms of understanding at the time these individuals  
14 took the employment, it is quite relevant to get them to  
15 say what they signed up for, and the documents, I think,  
16 speak for themselves on that. Okay.

17 What is your third point, if any?

18 MR. LUKAS: Well, Your Honor, also, he is making  
19 the same type of arguments with respect to salary means no  
20 overtime. He made that argument to the jury that if you  
21 get paid salary, you don't get overtime. That's an  
22 improper statement of the law. He stated that --

1 MR. LUKAS: That's what I have, Your Honor.

2 THE COURT: All right. Those will be preserved  
3 for the record and if you want to submit curative  
4 instructions at the end of the case, I will consider them.

5 Again, opening statement is opening statement.

6 We will have to see what the evidence in the case says and  
7 if called for. We will address the facts when we instruct  
8 the jury. But I want to say that I really admire all the  
9 work you have done. We have had a good first day and I  
10 think both sets of lawyers have really distinguished  
11 themselves. So I bid you good night and we'll see you  
12 tomorrow morning at about 8:45. Thank you very much.

(Proceedings adjourned at 5:10 p.m.)

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2  
3 **CERTIFICATE OF REPORTER**4  
5  
6  
7  
8  
9 As an official court reporter for the United  
States District Court, appointed pursuant to provisions  
of Title 28, United States Code, Section 753, I do hereby  
certify that the foregoing is a correct transcript of  
the proceedings in the above-entitled cause on the date  
hereinbefore set forth.10  
11  
12 s/ Karen Klerekoper

13 KAREN KLEREKOPER, CSR, RPR

14 Official Court Reporter